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June 13, 2024

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Salt Lake City, Utah 84101

Submitted Electronically to: BLM ePlanning, https://eplanning.blm.gov/

RE: Bureau of Land Management Notice of Intent to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements

Dear Coordinator Deibert,

Eureka County, Nevada (the County), appreciates the opportunity to provide comment on the Bureau of Land Management's (BLM's) greater sage-grouse (GRSG) resource management plans amendment (RMPA) and associated draft environmental impact statement (DEIS).[1] The County, a rural county in north-central Nevada, has actively participated as a cooperating agency in BLM's current amendment process, and all previous RMPA processes, and has been deeply involved in BLM's now more than decade-long sage-grouse conservation land use planning as well as in state and local sage-grouse conservation efforts. All of our previous input on these prior RMPA planning efforts still applies and should be considered by BLM and result in changes to adequately address our comments.

Eureka County has a proprietary interest in its ability to enforce land use regulations, its powers of revenue collection and taxation, and its protection of natural resources from harm. The County has a vested interest in ensuring that the environmental health of its land interests is not threatened by this RMPA process and ACEC designations. In addition to impacts to our natural resources industries, the RMPA and its ACEC restrictions would have spillover effects to county-owned lands adjacent to BLM managed lands and impose other harms on Eureka County.

About eighty percent of Eureka County's land area is managed by the BLM. Eureka County's economy and social stability is driven by and linked with mining, farming and ranching, which are industries harmed by the land use restrictions and prohibitions in the BLM's RMPA. Roughly 2,000 people live in Eureka County and employment is mainly in these natural resources sectors. The

[1] BLM Docket No. 223.LLHQ230000.L11700000.PI0000.LXSGCO000000.

welfare and viability of the community is dependent on business and recreational activities conducted on or in concert with federal lands especially since private land makes up only 13% of Eureka County's total land area. Burdensome land use restrictions such as ACECs threaten many Eureka County jobs because these restrictions substantially reduce uses of federally administered lands and adversely affect the bulk of our socioeconomic base. The County is already at an economic threshold struggling to get by, especially through mining "bust" cycles. Any additional losses in employment and economic outputs from Eureka County will be devastating. Because of the small population, a handful of lost jobs in Eureka County is equivalent to the loss of many jobs in larger metropolitan areas.

The DEIS/RMPA also will significantly affect the resistance and resiliency of our sagebrush-steppe landscape. Getting this right so that it is a positive effect is critical to our County: GRSG habitat conservation is entwined in an effort to reduce wildfire, which has caused 87% of GRSG habitat loss in the Great Basin.[2] The County Fire Plan notes that:

> Big sagebrush is the most common plant community in Nevada with an altered fire regime, now characterized by infrequent, high-intensity fires. Sagebrush requires ten to twenty or more years to reestablish on burned areas. During the interim these areas can provide the conditions for establishment and spread of invasive species and in some cases inhibit sagebrush reestablishment. The most common invasive species that reoccupies burned areas in northern Nevada is cheatgrass.[3]

Because of the vast amount of public land in Eureka County, our protection from wildfire relies in large part on BLM's land use designations. As recently as this March, BLM was engaged in a months-long effort to conduct pile burns in Eureka County.[4]

The GRSG DEIS/RMPA will impact—directly or indirectly—every citizen within our County. A scientifically accurate plan and one that is maximally consistent with the State of Nevada's Sage-grouse Conservation Plan as well as with County land use plans is fundamental to Eureka County's ability to fulfill its statutory obligation under Nevada law to safeguard public health, safety, and welfare.[5] As a cooperating agency, we have therefore attempted to assist BLM in developing alternatives and analyzing their impacts on GRSG outcomes, local socioeconomic stability, our historic agriculture-based custom and culture, and perhaps most urgently, the public's health, safety, and welfare, specifically as it relates to the various alternatives' likelihood of increasing or decreasing wildfire risk. These matters are also addressed in the County's Natural Resources and Land Use Plan, which BLM is required to consider in its NEPA analysis under 40 C.F.R. §§ 1502.16(5e) and 1506.2(d).

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[2] BLM, *Greater Sage-Grouse Plan Implementation Rangewide Monitoring Report for 2015–2020*, at 31 (2021).

[3] Eureka County Fire Plan at 3.2.2.

[4] *See* BLM, *BLM to Conduct Pile Burning Activities from December to March* (Dec. 1, 2023) https://www.blm.gov/press-release/blm-conduct-pile-burning-activities-december-march.

[5] NRS 244.146(1)(c); *id.* at 244.143(2)(a).

BLM has now amended RMPs for ten western states three times during the past ten years: in 2015, 2019, and 2024. This pattern of conducting a west-wide amendment of RMPs involves massive and repeated expenditure of resources and time by both BLM and coordinating agencies. Additionally, those making a living on public land (through grazing, mining, etc.) and communities, like the County's, dependent on public lands for socioeconomic stability need to have certainty and a clear sense as to what can be done where and under what circumstances. We ask BLM to make necessary changes to the DEIS/RMPA so that the DEIS/RMPA is lawful, accurate, and comprehensible—and, thus, so that it provides consistency for local governments and other regulated parties.

We prefer Alternative 2, which replicates the 2019 RMPAs with the 2020 Supplemental EIS clarifications, to all other alternatives. Because BLM has indicated that it intends to pick a newly proposed alternative, we believe that Alternative 5 is preferable to any of the other new alternatives (Alternatives 3, 4, and 6) that BLM has proposed.

However, we have deep concerns regarding aspects of all of the new alternatives. Our concerns include that (excepting Alternative 2, which BLM does not appear to treat as a viable alternative) BLM has not proposed an alternative that satisfies the obligation under FLPMA to ensure that its RMPA is maximally consistent with the Nevada State Greater Sage-grouse Conservation Plan; that that the alternatives analysis is incomprehensible, contravening the National Environmental Policy Act (NEPA); that the plan does not reflect the best available science when it ignores the fact that wildfire is the leading cause of GRSG habitat loss and that the most current lek counts showed an increase in male attendance at most leks west wide; that it proposes inaccurate habitat management area (HMA) designations; that its west-wide planning scale and its proposed designation of areas of critical environmental concern (ACECs) in Alternatives 3 and 6 contravene FLPMA. We are also concerned that, perhaps because of the massive scale of BLM's analysis—ten states and 69 million acres—BLM has not properly considered the concerns the County expressed in its cooperating agency comments in the DEIS/RMPA drafting process.

We incorporate those comments and all our previous comments on the prior RMPAs, by reference as though fully set forth herein, and reiterate many of them below, with the hope that these public comments on the DEIS/RMPA can help produce a stronger FEIS/RMPA.

I. BLM's Faulty, Years-long GRSG Planning Process

Eureka County has been involved in BLM's GRSG planning process since the amendment process that resulted in BLM's 2015 Greater Sage Grouse Approved Resource Management Plan Amendment (ARMPA). Indeed, the County joined with other parties in filing a lawsuit in the United States District Court for the District of Nevada challenging the ARMPA. The Nevada Court concluded BLM violated the National Environmental Policy Act (NEPA) and remanded the ARMPA, ordering BLM to prepare a supplemental EIS for the Nevada and Northeastern California Greater Sage-grouse Resource Management Plan to address the NEPA violations. The Nevada Court recognized Nevada's unique interests in the sage grouse planning process, which include "significant interests in the protection, propagation, restoration, transplanting,

introduction and management of wildlife in [the] State."[6] The Court also recognized that travel restrictions in the 2015 ARMPA have caused Eureka County concrete and imminent injury as a result of the NEPA violations.[7] The court held that federal law requires that "local governments' land use and economic concerns be given substantive consideration when creating national land use plans . . . as local governments and their citizens are directly impacted by the effects of any such plans."[8] Unfortunately, these harms and shortcomings are perpetuated and magnified in the current DEIS/RMPA including the ACEC-related components.

BLM's subsequent land use plan amendment (RMPA) process, resulting in the 2019 ARMPA and Record of Decision (2019 ROD), was completed, in part, to satisfy the court's remand and order. Shortly after publication of the 2019 ROD, the United States District Court for the District of Idaho issued a preliminary injunction to halt implementation of the 2019 ROD and ARMPA. To address the Idaho court's concerns outlined in its preliminary injunction, BLM completed yet another supplemental EIS and signed a subsequent Record of Decision in 2021 (2021 ROD). Although, as we further describe below, the 2021 ROD is legally effective, BLM is not implementing it and has not presented it to the District of Idaho to inform the court that it has completed another supplemental EIS and has a new ROD in effect that post-dates the one the District of Idaho preliminarily enjoined.

Eureka County was actively involved and substantively contributed as a cooperating agency to the 2019 and 2020 RMPA processes. Eureka County strongly asserts that these subsequent plans are significant improvements over and provide needed clarity to the 2015 ARMPA. The 2015 RMPA implementation has been demonstrably ineffective and, in fact, harmful to greater sage grouse habitat conservation efforts. While some of these harms have occurred on federal lands, there have been spillover effects to county-owned lands adjacent to federal land and, thus, harm to the County's proprietary interests that BLM must consider.

For the current process, BLM's impetus is the "need" to amend the 2015 RMPA to, in part, "address the continued GRSG habitat losses that are contributing to declines in GRSG populations" and "ensure habitat management areas and associated management incorporate recent relevant science to prioritize management where it will provide conservation benefit (including providing for durable planning decisions when considering the effects of climate change)."[9] But, as we describe in more detail below, BLM fails to explain how this need could justify revising plans approved less than four years ago and why, when ACECs were deemed unnecessary in the 2015 process and not considered in the 2019 process, it has decided to include alternatives (Alternatives 3 and 6 in the DEIS/RMPA) that would establish ACECs. This raises the immediate question of what conditions have changed since completion of the revisions to the land use plans less than four years ago.

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[6] *See W. Expl., LLC v. U.S. Dep't of the Interior*, 250 F.Supp.3d 718,731 (D. Nev. 2017) (internal quotation marks omitted).

[7] *Id.* at 735.

[8] *Id.*

[9] DEIS at ES-2.

We argue the 2019 plans adopted in the 2021 ROD after a clarifying Supplemental EIS —which BLM considers as its "no action" alternative, Alternative 2—already meet the purpose and need of the current DEIS/RMPA. Notably, Alternative 2 does not contemplate any potential ACECs.

II. RMPAs should provide guidance to BLM in making future decisions; the 2024 GRSG RMPA instead prescribes action that is not based on best available science.

A. RMPAs should guide BLM in making future decisions and must be based on reliable and the best available information.

The 2024 GRSG RMPA involves ten western states, 121 million acres of public land, 69 million acres of GRSG habitat, and amendments to 77 separate RMPs.[10] The Supreme Court has commented on the "immense scope of projected activity that a land use plan can embrace" where a land use plan "present[ed] a comprehensive management framework for 1.5 million acres of BLM-administered land"; this RMPA is many orders of magnitude more immense.[11]

RMPs/RMPAs, which generally operate at a larger scale than project-specific determinations, are meant to provide a platform for further action. They "are designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses."[12] FLPMA and BLM regulations "confirm that a land use plan is not ordinarily the medium for affirmative decisions that implement the agency's projections."[13] Though a RMPA can constitute final agency action[14] and can establish "[l]and areas for limited, restricted, or exclusive use,"[15] "a land use plan is generally a statement of priorities; it guides and constrains actions, but does not (at least in the usual case) prescribe them."[16]

This role of a RMPA—providing only a platform for further action—makes particular sense for the 2024 GRSG RMPA given its massive scale. The RMPA relies on models to designate HMAs without ground-truthing them, given BLM's proposal to designate between 21-plus million acres (Alternative 3) and 9.5-plus million acres of priority habitat management areas (PHMAs) in Nevada alone. It would be difficult for BLM to ground-truth all of this designation, though—as we note below and have previously expressed in cooperating agency comments—BLM could have better worked with local governments relying on our data and expertise in managing land within the County to help make more accurate habitat designations. As they are proposed in

[10] *See* BLM, Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement, at *10 (Mar. 14, 2024).

[11] *Norton v. S. Utah Wilderness All.*, 542 U.S. at 70.

[12] 43 C.F.R. § 1601.0-2.

[13] *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 69–70 (2004) (brackets and internal quotation marks omitted).

[14] *See*, *e.g.*, *W. Watersheds Project v. Haaland*, 850 F. App'x 14, 15 (D.C. Cir. 2021) (where a RMP ended the BLM's decisionmaking process for the wild horses by barring wild horses from a particular area of range because it did not provide sufficient habitat, the RMP constituted final agency action); *see also Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (final agency action "marks the consummation of the agency's decisionmaking process" and is action through which "rights or obligations have been determined, or from which legal consequences will flow").

[15] 43 C.F.R. § 1601.0-5(n)(1).

[16] *Id.* at 71.

BLM's May 2024 update to its HMA model, habitat designations in Eureka County make several errors.

Because of these errors, and the risk of them as a result of the RMPA's west-wide scale, it is inappropriate for the RMPA to take prescriptive action that is rarely warranted in RMPAs. BLM should not adopt the prescriptive actions in Alternative 3, closing all PHMA to new fluid mineral leasing, saleable minerals/mineral materials permits and nonenergy leasable minerals leasing not associated with existing permits and leases, livestock grazing, rights of way, and wild horses and burros.[17] Putting such lands off limits based on modeling without the opportunity for ground-truthing and use of the best available science and information is arbitrary and unlawful. Of course, the requirement that the DEIS/RMPA use reliable information and make accurate determinations holds not just for Alternative 3 but for all alternatives discussed in the DEIS/RMPA.

This requirement is found in statute and regulation. NEPA requires that BLM "ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents" and "make use of reliable existing data and resources."[18] Moreover, in Nevada, BLM treats GRSG as a sensitive species,[19] and "[w]hen administering the [BLM] sensitive species program, all information shall conform to the standards and guidelines established under the Information Quality Act."[20] BLM's Information Quality Guidelines state that "BLM operates on the principle of collecting or acquiring timely information that it judges to be the best available consistent with its mission requirements."[21]

The DEIS states that BLM will be able to "adapt habitat management areas over time to reflect best available science" through its regular evaluation of RMPs and the resulting maintenance, amendment, or revision to the RMP.[22] But the County has experienced the difficulty of adjusting allocations or management decisions to the reality of GRSG habitat or lack thereof. For example, in litigation regarding the 2015 GRSG RMPAs, Eureka County showed that BLM had "erroneous[ly]" designated the town of Eureka, "Eureka County's landfill, power lines, subdivisions of homes, farms with alfalfa fields and irrigation systems, hay barns, and important portions of the Diamond Valley area" as PHMA.[23] The court held that "[t]he decision to designate these areas as sage-grouse habitat is so implausible that it cannot be ascribed to a difference in opinion."[24]

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[17] *See* DEIS at ES-4.

[18] 40 C.F.R. § 1502.23.

[19] BLM, Nevada Special Status Species List, at 2 (Sept. 2023) https://www.blm.gov/sites/default/files/docs/2023-11/NV-IM-2024-003%20att%201%20BLM%20Nevada%20Special%20Status%20Species%20List_0.pdf

[20] BLM, Manual M-6840.2.

[21] BLM, Information Quality Guidelines, at 9 (Apr. 2, 2018).

[22] DEIS at 1-8.

[23] *W. Expl., LLC v. United States DOI*, 250 F. Supp. 3d 718, 749 (D. Nev. 2017).

[24] *Id.* at 749 n.2.

There and in other instances, although the parties agreed that areas like the town of Eureka were not GRSG habitat, BLM did not adjust its designations. In the 2024 process, as we explain below, the County has analyzed PHMA designations within its borders and conveyed to BLM in our cooperating agency comments significant errors in that designation. Tightly limiting designations like Alternative 3 and ACECs, when based on unreliable and inaccurate information, create significant problems for Eureka County, which relies on BLM's proper management of public lands to ensure public health, safety, and welfare in the County. Indeed, the Nevada district court found that as a result of travel restrictions imposed on PHMA, the mis-designations in the 2015 RMPAs, counterintuitively, "placed restrictions on effectuating environmental programs, including invasive weed reduction and water management" that help create healthy GRSG habitat.[25]

B. The 2024 RMPA habitat designations are not based on best available science: Eureka County has identified numerous errors in BLM's habitat designations.

In cooperating agency comments, the County repeatedly stated that BLM must engage in ground-truthing to achieve accurate habitat designations. Nonetheless, BLM has not ground-truthed its designations, and it does not include an obvious, reasonable mechanism in the RMPA for achieving more accurate designations.[26]

As one of many examples of which we are aware, there is a large area in southern Eureka County designated as a PHMA that incorrectly includes the Town of Eureka, US Highway 50, State Route 278, the Eureka County landfill, two major transmission lines including the Falcon-to-Gondor major distribution power line, multiple ancillary power lines, multiple subdivisions with homes, paved roads and gravel roads, farms with alfalfa fields, irrigation systems, and hay barns, among other infrastructure, and pinyon-juniper woodlands. These arbitrary and incorrect habitat delineations could have serious implications for Eureka County and our socioeconomic viability if not verified to local data and ground-truthing. As noted, the United States District Court for the District of Nevada previously called these errors "implausible," and the new mapping pulls in even more "implausible" areas than before.

Generally, we believe that HMAs that extend outside of State designated Population Management Units and in and around cities and towns will result in in inconsistent and ineffective management decisions. Because BLM released mapping in response to its most recent model update after the DEIS was published for public comment, cooperating agencies like the County did not have the opportunity to work with BLM in that capacity to develop better mapping. The BLM also needs to clearly articulate that the maps for the State of Nevada have not been verified by the State, should note in the FEIS/RMPA that through the cooperating agency comment process the model was incomplete and not updated, and should state in the FEIS/RMPA that final allocation decisions may be subject to change based on field verification of

[25] *Id.* at 749.

[26] By contrast, for example, Nevada's 2019 Greater Sage-grouse Conservation Plan provides: "At the onset of a proposed project, habitat evaluations or 'ground-truthing' of the project site and its surrounding areas shall be conducted by a qualified biologist with sage-grouse experience using methods as defined in Stiver et al (2010), or other mutually agreed to scientifically valid techniques, to confirm habitat type. Evaluations can be conducted by the SETT or NDOW at the request of the project proponent." *Id.* at 3.2.1.

mapped habitat categories. The mapping and designation of lands as priority or even general habitat is infested with local errors that show the maps cannot be relied upon for local-scale decisionmaking.

Finally, we note that it is a poor substitute for accurate, science-based habitat designations that, as the County requested, BLM now states in the DEIS/RMPA that "habitat management area boundaries are not intended to represent a survey-grade habitat boundary, may include results of large-scale modeling, and are not to be used exclusively for habitat determinations at a project or site-level scale."[27] Though we asked that this statement be prominent in the DEIS/RMPA, it is buried in the alternatives table. The process to be able to adjust habitat determinations at the project scale is undue and burdensome, especially when there are known areas erroneously included as HMA which are in no way actually HMA. To move forward with projects or other land use authorizations in areas known to not be HMA but improperly designated as HMA will take a very expensive and bureaucratic process to make adjustments to GRSG management requirements if the RMPA lacks the simple requirement for ground truthing and BLM's consideration of site-specific information. Further, there are so many built in subjective measures that could preclude projects or actions moving forward based on one BLM biologist's subjective opinion (i.e., indirect impacts and connectivity). Further, the mitigation requirements in Nevada through the CCS are not, but must be, built into to the HMA ground-truthing criteria related to overcoming indirect impacts. We continue to ask BLM to rectify, in the FEIS/RMPA, its erroneous habitat designations and process for more streamlined ground-truthing.

REQUESTED CHANGE: BLM should revise the 2024 DEIS/RMPA to conform to the basic principle that an RMPA is a platform only that provides generalized guidance and permits BLM to conduct streamlined project- or field office-specific designations of habitat using best available science; in this case, field surveys that ground-truth models, and building in Nevada's CCS. Because the 2024 model's habitat designations are not based on best available science, the RMPA's designation of HMA must not trigger prescriptive actions like those contemplated by Alternative 3. For this reason, among others, the County asks that BLM reject Alternative 3's and any ACEC prescriptions for all HMA.

III. Alternatives 3, 4, 5, and 6 are not, but must be, maximally consistent with Nevada's GRSG Conservation Plan and County land use plans.

A. FLPMA requires maximal consistency.

FLPMA requires that land use plans "be consistent with other Federal agency, state, and local plans to the maximum extent consistent with Federal law and FLPMA provisions."[28] Thus, "to the extent practical," BLM must "keep itself informed of other Federal agency and state and local land use plans, assure that consideration is given to those plans that are germane to the development of BLM land use plan decisions, and assist in resolving inconsistencies between Federal and non-Federal plans. The key is ongoing, long-term relationships where information is

[27] DEIS at 2-19.

[28] BLM, H-1601-1, at 6; *see also* 43 U.S.C. § 1712(c)(9) (Land use plans "shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of" FLPMA.).

continually shared and updated."[29] The same requirements apply where BLM amends RMPs: "An amendment shall be made through . . . interagency coordination and consistency determination as prescribed in [43 C.F.R.] § 1610.3.[30]

The cooperative federalism that FLPMA requires means that BLM's land use planning decisions—including the 2024 GRSG RMPA—must be informed by state and local government plans and be maximally consistent with such policies and plans to the extent permitted by federal law. "It is clear . . . that [FLPMA's coordination and consistency requirement] protect[] local governments from over encroachment by the federal government and aims to balance conservation with communities' sustained use of the environment. . . . The explicit language of [the requirement] provides that the local knowledge and concerns of counties be adequately considered in the land use planning process."[31] By removing GRSG planning from the local sphere of Field and State offices, the 2024 GRSG RMPA deprives state and local governments, like the County, of their legally mandated role in the planning process.

As we explain below, the DEIS/RMPA is not maximally consistent with State of Nevada and Eureka County GRSG conservation plans and land use plans.

B. The Council on Environmental Quality's (CEQ's) NEPA implementing regulations require BLM to explain where federal land use plans are inconsistent with state and local land use plans or laws.

While NEPA does not require reconciliation between federal and state or local land use plans, CEQ's NEPA implementing regulations require that a NEPA document account for "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned."[32] Thus, "environmental impact statements *shall* discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan or law (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law."[33]

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[29] H-1601-1 at 6; *see also* 43 U.S.C. § 1712(c)(9) (FLPMA provides that "to the extent consistent" with federal public land law, BLM must "coordinate [its] land use inventory, planning, and management activities . . . with the land use planning and management programs . . . of the States and local governments within which the lands are located.").

[30] 43 C.F.R. § 1610.5-5. The Department of the Interior's regulations for the Fish and Wildlife Service require it to coordinate with states regarding wildlife on federal public land: "the effective stewardship of fish and wildlife requires the cooperation of the several States and the Federal Government." *Id.* § 24.1(b).

[31] *See W. Expl., LLC v. Dep't of Int.*, 250 F. Supp. 3d 718, 739 (D. Nev. 2017). Additionally, BLM cannot, as the 2024 GRSG DEIS/RMPA purports, assert that its national policies, forced through landscape scale planning, are "federal public land law" and, as a result, render consistency review meaningless because state and local plans could be deemed "inconsistent" with the newly pronounced federal policy unlawfully declared in the landscape scale planning. *See Gose v. United States Postal Serv.*, 451 F.3d 831, 840 (Fed. Cir. 2006) ("An agency interpretation that effectively eviscerates regulatory language is *per se* inconsistent with the regulation and may be accorded no deference.").

[32] 40 C.F.R. § 1502.16(a)(5).

[33] *Id.* § 1506.2(d) (emphasis added); *see also* CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, at 23b, c (Mar. 16, 1981, amd. 1986) ("After identifying any potential land

The DEIS/RMPA does not meet even this standard: we see no discussion in the DEIS/FRMPA of specific inconsistencies between the County's or the State's plans, policies, and programs.

C. The west-wide scale of the DEIS/RMPA makes it impossible for the RMPA to be maximally consistent with State and County land use planning.

BLM's existing regulations mandating that "Field Managers will prepare resource management plans, amendments, revisions and related environmental impact statements"[34] provides for a process allowing long-term coordination between BLM and local governments that facilities the required maximal consistency between BLM's RMPAs and local land use planning. Any other form of planning is necessarily less consistent. Indeed, the scale of the DEIS/RMPA—comprising hundreds of state, tribal, and local government agencies—renders the BLM's FLPMA-derived coordination and consistency obligations impossible to fulfill; there is simply no means by which a single RMPA can meet FLPMA's consistency requirements with the hundreds of state, tribal, and local resource-related plans within the planning area. Nor is it possible for BLM to meaningfully coordinate with hundreds of state and local government agencies. This underscores that planning must, practically and legally, be undertaken at the field office or state level.

We describe below our specific difficulties working with BLM as a cooperating agency on the 2024 GRSG DEIS/RMPA. First, however, we highlight several more general aspects of a west-wide planning process that render impossible the coordination and maximal consistency that statute and regulation require.

1. The west-side scale of the 2024 DEIS/RMPA makes it more difficult for counties, states, and tribes to meaningfully participate in the land use planning process. Very few counties—and especially counties like Eureka County, with small populations and a huge percentage of federal public land—have the resources necessary to employ a full-time staff member dedicated to monitoring the county-level effects of west-wide RMPAs.[35]

2. Because it encompasses so many localities, the 2024 DEIS/RMPA dilutes or even ignores issues of local significance. For example, as we have explained, the 2015 GRSG RMPAs mis-designated as GRSG habitat land slated for expansion of the County landfill[36] and the 2024 DEIS/RMPA makes numerous mis-designations of degraded habitat as PHMA.

3. The 2024 DEIS/RMPA changes the way BLM interacts with local governments and its own field offices. "Cooperative relationships are easier to maintain at the local level, rather than at a more distant administrative level. The shift toward landscape-level planning arguably will result in a shift toward centralized, BLM. The voices of larger national and

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use conflicts" between local, state, and federal plans, "the [federal] decisionmaker must weigh the significance of the conflicts.").

[34] 43 C.F.R. § 1601.0-4(c).

[35] *See* Jim Fontaine, Nevada Association of Counties, *Testimony Before the House Natural Resources Committee Oversight Hearing on State Perspectives on BLM's Draft Planning 2.0 Rule* (Jul. 7, 2016) https://www.congress.gov/event/114th-congress/house-event/LC44561/text.

[36] *See W. Expl., LLC v. Dep't of Int.*, 250 F. Supp. 3d at 736.

regional players may well drown out smaller, local voices."[37] This approach proposed by BLM in Planning 2.0 was rejected by Congress.

4. It is difficult to plan across jurisdictions, and to harmonize disparate priorities, in a west-wide RMPA. As we explain below, the 2024 DEIS/RMPA is inconsistent with both Nevada's GRSG Conservation Plan and with County land use plans. Ours is not a unique experience: the Utah Division of Wildlife Resources has described how BLM's adoption of universalized sage grouse habitat guidelines in its 2015 multistate Greater Sage Grouse RMPAs has "been problematic for rangeland management in Utah, as most of Utah's sage-grouse occur in desert shrub areas that receive less annual precipitation than those in the northern range of the species," which was the basis for the universalized guidelines.[38]

5. The DEIS/RMPA does not appropriately consider economic impacts on local jurisdictions. It states that "[t]he nature and types of social and economic impacts associated with management actions under the alternatives would be similar across [greater sage grouse] range, however, effects would not be evenly distributed and may be felt at the individual community-level to a greater degree."[39] **But it does not discuss how effects might diverge, and the appendix assessing economic conditions spends just three pages discussing economic conditions in all Nevada counties.**[40] In determining the scale of the impacts analysis, BLM must "balance need for a comprehensive analysis versus considerations of practicality, while also keeping in mind that use of a larger analysis area can dilute the apparent magnitude" of impacts.[41] Here, BLM's ten-state scope of analysis necessarily dilutes the magnitude of impacts on counties: local restrictions on grazing, for example, might be economically significant to the County but at a larger scale the impact might be portrayed as less significant because grazing could be accomplished on other rangeland.[42]

Necessarily, because it is less consistent with State and local land use plans than an RMPA developed at a more local level, the west-wide, Washington Office-prepared DEIS/RMPA is not maximally consistent with more local plans. Our comments below expand on this theme.

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[37] Rebecca Watson and Joshua Cannon, *Toward Planning 2.0: The New Landscape of BLM Planning*, 93 Denv. L. Rev. Forum 49, 54 (2015).

[38] Utah Div. of Wildlife Res., *Utah Conservation Plan for Greater Sage-Grouse*, at 12 (Jan. 2019) https://wildlife.utah.gov/sage-grouse/Utah_Greater_Sage-grouse_Plan.pdf.

[39] DEIS at ES-7.

[40] *See id.* at 13-2-14–13-2-16.

[41] *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 943 (9th Cir. 2014). BLM is required to analyze economic impacts in an EIS. BLM must assess the economic impacts of a proposed action in an EIS. *See* 40 C.F.R. § 1508.8.

[42] *See Diné Citizens Against Ruining Our Env't v. Haaland*, 59 F.4th 1016, 1043–44 (10th Cir. 2023) (acknowledging that scale can be important in analysis of impact because, for example, "all agency actions causing an increase in [greenhouse gas] emissions will appear de minimis when compared to the regional, national, and global numbers" of greenhouse gas emissions").

D. Alternatives 3–6 are not maximally consistent with the Nevada GRSG Conservation Plan and, contrary to CEQ's NEPA implementing regulations, the DEIS/RMPA does not discuss these inconsistencies.

As it applies to Nevada, the RMPA must be maximally consistent with the 2019 Nevada Greater Sage-grouse Conservation Plan (the State Plan). At present, none of the newly proposed action alternatives—Alternatives 3–6—are consistent with the State Plan. Among those alternatives, Alternative 5 (BLM's preferred alternative) is most consistent; however, it too would require substantive amendment to be consistent with the State Plan. In our view, Alternative 2 is the plan most consistent with the State Plan. We find it important to note, however, that adoption the habitat management map used by Nevada in the State Plan does not mean consistency if the underlying processes on how the maps are to be used and applied are not aligned. The DEIS alludes that by adopting a state approved habitat management map, there is somehow consistency with state plans.

The DEIS/RMPA pays little or no attention to Nevada's State GRSG conservation practices. The State Plan is not mentioned in the DEIS/RMPA. Neither is Nevada's Sagebrush Ecosystem Program's statutory mandate to "establish and carry out programs to preserve, restore and enhance sagebrush ecosystems on public land in" Nevada.[43] There is no mention of the Sagebrush Ecosystem Council (SEC), created by Nevada statute to "[e]stablish and carry out strategies for: (1) The conservation of the greater sage grouse and sagebrush ecosystems in this State; and (2) Managing land which includes those sagebrush ecosystems, taking into consideration the importance of those sagebrush ecosystems and the interests of the State."[44] Nor is there mention of the SETT or its technical recommendations.

BLM's single reference to the Nevada requirements emphasizes the Conservation Credit System (CCS) for mitigation of adverse impacts to GRSG habitat without mentioning any other aspects of Nevada's statute-created GRSG conservation program.[45] While the CCS is an important component of the State Plan, recognition of the CCS does not constitute consistency with the State Plan. Indeed, like the 2024 DEIS/RMPA, the State Plan and the Nevada Administrative Code set forth requirements for avoidance and minimization in addition to mitigation.[46] BLM does not explain how or whether its avoidance, minimization, and mitigation strategy comports with the

[43] *See* NRS 321.592.

[44] NRS 232.162.

[45] We note that, in response to our comments on the ADEIS/ARMPA, BLM has removed language indicating that CCS is a voluntary requirement. *See* DEIS at 4-229. However, it does not appear to treat the State Plan's "avoid" and "minimize" requirements as mandatory. *See* DEIS at 4-229 (suggesting that Nevada does not mandate conservation by noting that "the regulatory conservation actions mandated by the State plans in WY, MT, and OR, and through mitigation required by the NV plan provide the greatest degree of regulatory certainty in addressing potential threats to GRSG"). NAC 232.460–80 establish regulatory requirements for projects that may impact sagebrush ecosystem.

[46] *See* NAC 232.470 (where a project will cause anthropogenic disturbance to GRSG habitat, the proponent must "work with the [SETT] to avoid and minimize such adverse impact to the greatest extent possible"); Nevada Sagebrush Ecosystem Program, 2019 Greater Sage-grouse Conservation Plan, at 14–15 (Apr. 2019) (establishing an avoid, minimize, mitigate hierarchy); *id.* at 86 ("After all practicable economically and technically feasible possibilities to avoid and minimize impacts to sage-grouse habitat have been exhausted, residual adverse impacts are required to be offset by mitigation requirements as determined through the CCS.").

State Plan or, if federal law prevents consistency, how BLM has attempted to achieve maximal consistency.

We note several discrepancies between the State Plan and the DEIS/RMPA:

1. Severe, across-the-board restrictions on use of PHMA in Alternatives 3 and 6 is inconsistent with the State Plan's provision of an avoidance process by which a project proponent, including local government, can proceed with anthropogenic disturbance even in PHMA so long as it satisfies certain conditions. This inconsistency is heightened for the ACECs contemplated by both Alternative 3 and Alternative 6.

2. The State Plan specifically provides for ground-truthing "to confirm habitat type" at the outset of a proposed project.[47] As noted, and despite the County's recommendation, the DEIS/RMPA makes no such provision though this is required to make decisions based on the best available science and information.

3. The State Plan establishes a process by which the State determines that "avoidance cannot be reasonably accomplished."[48] It includes specific instructions as to the process where a project proponent (who bears the burden) seeks to establish that avoidance cannot reasonably be accomplished. Certain aspects of this process are consistent with the new alternatives that the DEIS/RMPA proposes. For example, both may require collocation of the project with other, prior disturbance.[49] But Nevada's avoidance process is much more detailed than BLM's, and also includes significant differences. The table below compares the two:

State Plan Avoidance Process for PHMA **A project involving anthropogenic disturbance can proceed where the proponent proves:[50]**	**BLM Plan NV/CA State-Specific Screening Criteria to Avoid Effects** **If the project/activity cannot be placed outside PHMAs and GHMAs:[51]**
The project cannot be accomplished elsewhere	
Individual and cumulative effects of the project will not result in habitat fragmentation or population decline	Adjust the project to locate direct impacts (i.e., surface-disturbing activities) in non-habitat areas first, then in the least suitable habitat for GRSG without creating a barrier to movement or connectivity between GRSG seasonal habitats and populations

[47] *Id.* at 15.

[48] *Id.*

[49] *See id.* at 18; DEIS at 2-168.

[50] State Plan at 18.

[51] DEIS at 2-168.

Population in the relevant PMU is increasing, on aggregate, over the preceding ten years	
The project is collocated with other disturbances to the greatest extent possible	Collocate the project
The proponent has consulted with SETT to develop specific design features that mitigate impacts	Locate the project to avoid and/or minimize indirect impacts to lekking and source area (sometimes termed PHMA+)
The proponent mitigates impacts through the CCS	

We are particularly concerned that the RMPA/DEIS does not include in its scheme consultation with the SETT and SEC: this, again, minimizes the State's role in GRSG habitat conservation and would undermine a program the State of Nevada has built over the course of more than a decade with significant investment and demonstrated success.

BLM's 2015 and 2019 GRSG land use plans were both more consistent with the State Plan than the 2024 RMPA/DEIS. The 2015 Nevada FEIS/RMPA noted BLM's "adopt[ion of] key elements" of Nevada's State Plan and mentioned the SETT in the body of the DEIS/RMPA.[52] The 2019 Nevada ROD/RMPA—which we view as the alternative maximally consistent with the State Plan—provides that BLM will (1) notify the SETT regarding any project resulting in anthropogenic disturbance to designated habitat, (2) incorporate any State-required or -recommended mitigation into BLM's NEPA decisionmaking process, and (3) verify that the project proponent has coordinated with the SETT to ensure compliance with the State Plan.[53]

4. The State Plan requires ground-truthing before a project begins to confirm that *habitat exists*.[54] Unlike the State Plan, Alternative 3 provides no mechanism for management of non-habitat that BLM has designated as habitat. While Alternatives 4, 5, and 6 make at least some provision, albeit cumbersome and overly-bureaucratic, for inaccurate designations of habitat, they reverse the State Plan's project-specific process to determine whether habitat exists, instead establishing a process to determine that

[52] *See* BLM, Nevada and Northeastern California Greater Sage-Grouse Proposed ARMPA/FEIS, at ES-13 (June 2015) ("The Proposed Plan adopts key elements of the State of Nevada Greater SageGrouse Conservation Plan (State of Nevada 2014) and the State of Nevada Conservation Credit System (Nevada Natural Heritage Program and Sagebrush Ecosystem Technical Team 2014) by establishing conservation measures and focusing restoration efforts in the same key areas most valuable to the GRSG.").

[53] *See* BLM, Nevada and Northeastern California Greater Sage-Grouse Record of Decision and Approved Resource Management Plan Amendment, at 1-5 –1-6 (Mar. 2019).

[54] *Id.* at 2-19.

habitat does not exist: "If during consideration of a proposed action (project level authorization) within GRSG PHMA, GHMA, . . . and OHMA (in NV/CA) potential nonhabitat is identified, a field investigation should be conducted by a BLM biologist (or reviewed and accepted for confirmation)."[55]

This reversed presumption is especially troubling because of the inaccuracies, described above, in BLM's habitat designations: BLM does not offer a clear avenue by which the County, or any other proponent of a project on public lands, can establish that designated habitat should not, in fact, be designated as PHMA, GHMA, or OHMA. Thus, the errors are relied upon to change the status of lands from open to development or other uses to no surface occupancy or other restrictive land-use schemes, in some alternatives with no process to use the best available science for the BLM's decisionmaking.

5. The State Plan provides:

> Activities that address public health and safety concerns, specifically as they relate to federal, state, local government and national priorities, as well as routine administrative functions conducted by federal, state or local governments, including prior existing uses, authorized uses, valid existing rights, and existing infrastructure (i.e., rights-of-way for roads) that serve a public purpose and will have no adverse impacts on GRSG and its habitat, consistent with the State's current mitigation regulations, policies such as the State of Nevada's Executive Order 2018-32 and programs, shall not require mitigation through the CCS.[56]

By contrast, the DEIS/RMPA permits actions to address public health and safety only where a catastrophe or emergency is involved.[57]

6. For Alternatives 3–6, BLM often confusingly uses "compensate" in place of "mitigate" when noting that actions that would impact designated GRSG habitat should avoid, minimize, and mitigate impacts.[58] Under a heading titled "Compensation," the DEIS/RMPA states that "[m]itigation amounts should comply with State agency or regulatory requirements and [be] consistent with BLM mitigation policy."[59] BLM also uses the term "compensatory mitigation." This lack of clarity does not help regulated parties to understand BLM's requirements. And because the State Plan uses "mitigate" rather than "compensate" to describe actions that include those performed through the CCS, it is not clear how BLM's "compensate" requirement fits with the State Plan's "mitigate" requirement.

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[55] *Id.*

[56] State Plan at 21.

[57] *See*, *e.g.*, DEIS at 2-171.

[58] *See*, *e.g.*, the mandate in Alternative 4 to "[m]anage fluid mineral leasing and development (including geothermal) in GRSG habitat management areas to avoid, minimize, and compensate for adverse impacts to GRSG habitat to the extent practical under the law and BLM jurisdiction." *Id.* at 2-41. This usage occurs throughout the DEIS/RMPA.

[59] *Id.* at 2-23.

BLM should include in the FEIS language analogous to that included in the 2021 ROD for Nevada and Northeastern California: "With respect to any State compensatory mitigation requirements, the BLM will defer to the appropriate State authority to quantify habitat offsets, durability, and other aspects used to determine the recommended compensatory mitigation action."[60]

7. In the DEIS/RMPA, BLM uses the term "no net loss" as well as the term "net conservation gain." It is not clear how these terms relate. In one instance the DEIS/RMPA places these terms in tension.[61] In another, it appears to use them as synonymous.[62] BLM defines "no net loss" but does not define "net conservation gain," so it is unclear how BLM's vision of "net conservation gain" intersects with the State Plan's definition. As we suggested in our cooperating agency comments, this issue could have been rectified through adoption of the State Plan's definition of "no net loss."

   Further, it is unclear how BLM's definition of "no net loss" intersects with the State's definition of "net conservation gain," the State's fundamental requirement for GRSG habitat conservation. BLM states that "[e]stablishing no net loss will require full restoration of functional habitats or enhancement of habitats to minimally support the number of GRSG present prior to disturbance at the apex of the population cycle."[63] The State Plan defines "net conservation gain" as an "objective to maintain the current quantity and quality of sage-grouse habitat within the Service Area at the state-wide level by protecting existing sage-grouse habitat or by mitigating for loss due to anthropogenic disturbances. . . . This objective will be measured by the credit to debit ratio" established through the CCS.[64]

   On BLM's definition, "no net loss" appears to rely on measurement of GRSG population stability. But "net conservation gain" relies on measurement of habitat lost. BLM does not describe, explain, or attempt to rectify this inconsistency.

8. The State Plan clearly requires mitigation of all anthropogenic disturbance, no matter how authorized.[65] BLM, however, recognizes that it cannot require mitigation or use of CCS in all circumstances, particularly mining conducted under the General Mining Law.[66] BLM should explain in the FEIS/RMPA how it intends to ensure consistency with the State Plan

[60] BLM, Record of Decision for the Greater Sage-Grouse Supplemental Environmental Impact Statement, at 8 n.4 (Jan. 2021).

[61] *See* DEIS at ES-4 (describing "net gain vs. no net loss" mitigation strategies).

[62] *See id.* at 2-183 (Describing Utah-specific rules for "Net Conservation Gain: Apply a minimum standard of no net loss consistent with crosscutting language.").

[63] *Id.* at 2-23.

[64] State Plan at 14. We note that the State Plan refers to "no net loss" in an appendix explaining specific design features the SETT might implement. *Id.* at 141. This term is not defined in the State Plan and this use is its single appearance.

[65] State Plan at 21 ("Mitigation will be required for all anthropogenic disturbances impacting sage-grouse habitat within the Service Area.").

[66] *Id.* at 2-23–24.

for projects on federal land. The 2019 RMPA provides a possible solution to this issue through its requirement that BLM notify the SETT where a project will affect designated habitat as well as its requirement that BLM verify that a project proponent has complied with state law.

9. The DEIS contemplates a disturbance cap. That is, in PHMA, if "direct disturbance from existing and proposed infrastructure developments exceeds" 3% at the "project scale" or in the Habitat Assessment Framework (HAF) Fine Scale habitat selection area, "new infrastructure projects would be deferred to the extent allowable under applicable laws . . . or valid existing rights."[67] The State Plan does not provide for a disturbance cap.

10. The adaptive management framework BLM describes in Alternatives 3–6 does not comport with the State Plan's adaptive management approach or DOI's own guidance on adaptive management. This is particularly true of the hard threshold response, which automatically implements a host of allocation or management decisions that may or may not be warranted based on the cause of reaching a hard trigger.[68] Once the hard threshold responses are implemented the DEIS/RMPA does not provide for any iterative implementation or path for reversing those automatic implementations, and the scale of the response is also not well defined.

    Particular aspects of the adaptive management approach not included in the DEIS/RMPA but described in DOI's guidance include:

    a. Assessment of Problem (particularly important for a hard trigger response as there is no casual factor analysis);

    b. Design (particularly for hard trigger responses as responses are "hard wired" in at the RMP level);

    c. Monitor;

    d. Evaluate; and

    e. Adjust.[69]

    Further, the BLM cites to the adaptive management process as reasoning why the RMPA is necessary:

    > For the 2015 GRSG planning effort the BLM worked closely with States to identify population and habitat adaptive management triggers. If a triggers [sic] was met, the plans stated management changes may be appropriate. The BLM's 2021 Greater Sage-Grouse Plan Implementation Rangewide Monitoring Report for 2015-2020 [footnote omitted] identified 42 population triggers that had been

[67] DEIS at 2-29.

[68] *Id.* at 2-125–27.

[69] *See* Byron K. Williams et al., *Adaptive Management: The U.S. Department of the Interior Technical Guide* (2009).

> tripped through 2020, nearly half of the areas evaluated, suggesting management changes may be needed to address causal factors. Management changes can include either RMP-level changes or more specific and localized changes made to decisions that implement the RMPs[70]

We assert BLM has never allowed the adaptive management process developed with the State of Nevada to work. BLM and USGS have not provided the data regarding triggers in a timely fashion so that they can be proactively and adaptively addressed. It is a bait and switch to now require another RMPA to address trigger causal factors that could have been addressed more proactively and cooperatively through the State of Nevada's Adaptive Management Process in the State Plan. As an example, the 2021 Greater Sage-Grouse Plan Implementation Rangewide Monitoring Report for 2015-2020 does accurately describe the process that is supposed to be followed in Nevada but does not accurately describe the process that has actually been followed. The Monitoring Report on p. A11-32 describes how Adaptive Management Response Teams (AMRT) meetings occurred throughout the winter of 2019-2020 but never discusses the outcomes of the AMRT meetings and the final reports from these AMRT meetings that did determine causal factors, when apparent, and put forward action items for BLM and others to implement to address the causal factors and triggers. It is simply inaccurate for Table 21 of the Monitoring Report to note for each and every trigger for the causal factor to be "analysis in progress." Eureka County was actively involved in the South Central Planning Area and Elko Stewardship AMRTs. Both of these AMRTs had many NDOW and BLM biologists and managers participation. Both AMRTs provided detailed final reports with specific requests for actions for BLM to implement to address the triggers and causal factors, where determinable. Eureka County and the Eureka Conservation District took the lead in actually completing a couple of the actions to address the triggers that are not reported or the results mentioned. We are not aware of any active efforts by BLM to actually implement the AMRT recommendations.

Instead of a whole new RMPA to address the triggers and causal factors, the Adaptive Management Process in Nevada needs to be given the ability to work, where most of the shortcomings have come from the BLM's failure to provide the data and capacity to complete the process and implement the follow-up actions to address triggers.

There also needs to be clarity on how in areas where a trigger or triggers have been met and will never be able to return to a non-triggered state, such as a degraded ecological state with no restoration pathway, and preclusion or restriction of projects or actions are no longer necessary because they have no influence on returning an area to a pre-triggered state.

The County asks BLM to adopt the State Plan's adaptive management framework, which better complies with DOI's own adaptive management guidance than does the DEIS/RMPA.

[70] DEIS at 1-3.

E. Alternatives 3–6 are not maximally consistent with County land use plans and, in violation of FLPMA and NEPA, BLM does not discuss these inconsistencies.

Below are the specific inconsistencies we identified in the 2015 EIS and many remain or are not addressed in this DEIS/RMPA. We ask BLM to review these and strive for consistency and document in the EIS and ROD if consistency cannot be reached and measures BLM would take to reach consistency through implementation.

Conflicts between the Objectives of Eureka County Plans, Policies, and Controls (42 U.S.C. 1712(c)(9) and 40 CFR 1502.16(a)(5)

Largely, land-use and natural resource components of our Master Plan have not been implemented through regulation or permitting requirements but are primarily policy statements outlining policy objectives. Consistently and explicitly, since about 80% of the land in Eureka County is administered by BLM, we work to shape projects and decisions on these lands based on legal requirements of the federal agencies to meet consistency and overcome conflicts with our plans and policies to the maximum extent possible through our interpretation and application of such plans and policies. BLM must recognize that the County is empowered to interpret and apply our own Master Plan and policies and to provide this interpretation. BLM does not have the authority to independently tell us what they think our policies are or mean. Therefore, if we have stated to BLM that there is a possible conflict, then these must be included with full efforts by BLM to resolve these conflicts. These possible conflicts are to be included in their respective resource topic areas of the Environmental Consequences section of the EIS and we request so.

Conflicts with Proposed Plans

The answer to question 23b of the CEQ FAQs[71] clarifies that conflicts with "[p]roposed plans should also be addressed if they have been formally proposed . . . in a written form, and are actively pursued by officials of the jurisdiction."

The County Master Plan calls for the County to "[d]evelop a Water Resources Plan that takes into account existing and current conditions, analyzes various scenarios, outlines and analyzes different management alternatives including a status-quo or no-action alternative." Eureka County has formally proposed, approved, budgeted, and is two years in the process of an active planning effort to follow its Master Plan and develop a comprehensive water resource master plan. We believe components of the DEIS across all alternatives directly conflicts with our Water Resources Plan. Over 60% of the appropriated water rights in Diamond Valley (all on private lands) must be retired in order to reach sustainability of the agricultural community in Diamond Valley. We are in advanced discussions with various industries to target alternative, less water intensive land uses in Diamond Valley. One of the options of our plan is photovoltaic solar energy. The right-of-way (ROW) exclusions for solar energy in Diamond Valley will severely limit our ability to find a water balance and will in turn, force further subdividing and development of the private lands in Diamond Valley. Additionally, the range of water management options left

[71] *See* 46 Fed. Reg. 18,026 (Mar. 23, 1981). .

available for consideration in the water planning process is limited by the DEIS alternatives. BLM must work with us to overcome these conflicts.

This also creates an inconsistency with Nevada Revised Statutes (NRS) 540.011 that recognizes "the important role of water resource planning and that such planning must be based upon identifying current and future needs for water. The Legislature determines that the purpose of . . . water resource planning is to assist the State, its local governments and its citizens in developing effective plans for the use of water." The DEIS alternatives diminish our ability to develop "effective plans for the use of water" especially related to future needs many years into the future.

Further, the proposal to remove lands designated as suitable for disposal that have already gone through the administrative process and substantive requirements of FLPMA is disingenuous and is in conflict with Eureka County proposed plans for economic development and community expansion. We strongly request that lands currently designated as suitable for disposal remain in order to provide for future needs of our communities. The DEIS analysis that results in this removal of lands for disposal is unfounded in science and actual conditions on the ground and is and overly restrictive given the dozens of miles of power lines and roads in Diamond Valley and the extensive agriculture, homes, hay barns, airport, landfills, gravel pits, and other development that already exists.

We also have proposed plans to work with grazing permittees and other industries and interested stakeholders for mutually beneficial actions to keep multiple-uses intact while conserving and benefitting GRSG and other wildlife. These plans include encroaching pinyon-juniper removal, noxious weed control, distributed water developments, riparian enhancement, grazing management, and predator work. In fact, we have formally proposed work on BLM administered land over 3 years ago and BLM has failed to move forward for successful implementation. We have pitched may proposals to BLM to address resource concerns and prop up economic stability, all which have resulted in no action or interest by BLM staff. We have the tools to address the threats to GRSG and other wildlife while keeping land uses intact. Although touted as conservation measures, the DEIS alternatives will actually hamstring this effort. If BLM were to give our plans the required full consideration and allow us to keep management decisions local, with reasonable checks in place to determine progress towards conservation goals, we would come through with significant positive results.

We require BLM to work with us to develop and select an alternative that is consistent with our proposed plans.

Conflicts with Policies

We agree with, and implore BLM to incorporate, the guidance from CEQ related to the definition of the term "policies" in 40 C.F.R. § 1502.16(a)(5). The answer to question 23b of the CEQ FAQs clarifies that:

> The term "policies" includes **formally adopted statements** of land use policy as **embodied in laws or regulations**. It also includes proposals for action such as the initiation of a

planning process, or a **formally adopted policy statement** of the local, regional or state executive branch, **even if it has not yet been formally adopted** by the local, regional or state legislative body" (emphasis added).

The land-use and natural resource policy statements and policy objectives outlined in the Master Plan have been formally adopted by Eureka County by resolution and have been codified in our County Code thereby embodying these policies in local law.

Further, we assert that every comment the Eureka County Advisory Board has formally approved and provided to BLM on any GRSG EIS related report or analysis over the past few years is our formally adopted policy statement. We formally adopted these policies through public vote and always unanimous as a Board.

Inconsistencies with Eureka County Plans, Policies, and Programs

<u>Eureka County Master Plan</u>

- The County's "Natural Resource and Land Use Plan provides a scientifically and culturally sound framework for establishing community planning goals; and provides details of goals and actionable objectives for a number of high-priority issues" (p. 6-1). "[The] Plan is designed to: (1) protect the human and natural environment of Eureka County, (2) facilitate federal agency efforts to resolve inconsistencies between federal land use decisions and County policy, (3) enable federal and state agency officials to coordinate their efforts with Eureka County, and (4) provide strategies, procedures, and policies for progressive land and resource management" (p. 6-2).
    - DEIS does not have an alternative that includes the goals and actionable objectives or the strategies, procedures, and policies for progressive land and resource management.
- "Eureka County expects that all decisions regarding natural resource management and land-use and all goals and objectives incorporated into this plan and, by extension, into state and federal agency plans, will be realistic and attainable" (p. 6-5).
    - Many of the goals, and even more so, the objectives in the DEIS alternatives are not realistic and attainable. Many of them are not even measurable. See our specific comments below related to the goals and objectives of the DEIS alternatives.
- "Analysis and interpretation of facts is an important part of the process; so important that the U.S. Office of Management and Budget (OMB) has issued an instruction (OMB December 16, 2004, M-05-03; *Final Information Quality Bulletin for Peer Review*) to all federal agencies specifying the minimum standards for acceptable peer review of data or publications. Eureka County expects every federal employee to adhere to the OMB standards for Peer Review" (p. 6-5).
    - The OMB standard was not followed in the peer review of the so called "best available science" throughout the DEIS. For example, both the Sage-Grouse National Technical Team Report (NTT Report) and the FWS Greater Sage-Grouse Conservation Objectives Final Report (COT Report) are heavily relied throughout the DEIS alternatives but these documents did not follow the OMB standard for

peer review. We point out specific issues related to both reports and other science in the DEIS in more detail below. Scientific research and documentation used within the DEIS is limited in scope to repetitive authors and does not adequately incorporate recent rangeland research or current understandings of rangeland dynamics and largely omits rangeland scientists and other rangeland professionals. Proper peer review and adoption of the full range of best and current science is necessary for consideration and adoption by BLM prior to the Final EIS and ROD.

- "Per this plan, it is the policy of Eureka County that Federal and State programs make progress towards improved resource quality, greater multiple uses of the federal lands, preservation of custom, culture and economic stability of Eureka County, and protection of the rights of its citizens. Eureka County will continue to urge state and federal employees to participate in this effort to coordinate in order to resolve inconsistencies between federal proposals and County policy. Should hesitance on the part of federal or state agencies substantially interfere with this progress, then Eureka County may seek judicial intervention to compel agencies to obey the mandates of Congress" (p. 6-6).
    - The DEIS touts the ability of management action under various alternatives to make progress toward improved GRSG conservation. However, many of the proposed actions will greatly impact the multiple-uses of public land, undermine custom and culture, and interfere with the rights of Eureka County citizens.
- "Primary Resources: Soil, Vegetation, and Watersheds; GOAL: To maintain or improve the soil, vegetation and watershed resources in a manner that perpetuates and sustains a diversity of uses while fully supporting the custom, culture, economic stability and viability of Eureka County and its individual citizens" (p. 6-7); "The BLM and Forest Service must comply with the multiple use goals and objectives of the Congress as stated in the various statutory laws" (p. 6-8).
    - The DEIS alternatives are not in accordance with the multiple-use and sustained yield legal requirements and will not improve these primary resources in a holistic way that address the 3-legs of sustainability—the environment, the economy, and social needs and stability.
- "Development of Allotment Management Plans (AMPs), as an objective, will include completion of technically sound inventories; ecological status inventory (ESI) is a minimum, with other techniques as appropriate such as use pattern mapping as a measure of animal distribution, actual use records, detailed weather records, stream channel morphology, woodland features including age structure and density of trees, and other studies using standardized techniques. So-called "rapid assessment" techniques are permitted and in fact encouraged in Eureka County as a way to identify specific technical studies that are needed. Rapid assessment includes such techniques as the DOI Rangeland Health approach and the Riparian Functional Condition" (p.6-8).
    - The DEIS does not propose the implementation of any of these techniques through allotment specific AMPs. While there is discussion about implementation of AMPs in the DEIS, the ability to manage according to specific AMPs is undermined by the proposal of blanket restrictions, requirements, and actions across the entire landscape. There must be a focus on individual allotments through properly developed AMPs and associated resource inventories.

- "Goals and objectives will be set relative to the ecological potential of each location and will include descriptions of future ecological status, desired plant communities, livestock productivity and health, wildlife habitat attributes, wildlife population levels, acceptable levels of soil erosion, stream channel stability, and additional items specific to various land uses" (p. 6-8).
    - Goals and objective in the DEIS fall far short of being specific enough to clearly outline what will be required or what is possible according to ecological potential based on a current understanding and application of rangeland science. While many of the objectives speak to managing for ecological site potential, the State and Transition Model (STM) for any given Ecological Site Description (ESD) defines a range of vegetation characteristics in any given state. Also, "site potential" is not defined in the context of ESD and/or STM for any of the objectives. Is the site potential definition in the DEIS synonymous with "reference state" of the ecological site? If so, what if the current state of any give site has crossed a threshold into a degraded stable state in which there is no current restoration pathway known? We argue that the state of an ESD in some circumstances is the "site potential" even if not conducive to or acceptable sage grouse habitat. Without being more specific, objectives such as this open a door of subjective interpretation, contention, and more legal wrangling. Many of the DEIS objectives are not measurable or only partially measurable. Many objectives reference the habitat objectives that are blanket objectives with no regard to any particular ecological site or state of the site. Some areas may be at "site potential" given the current ecological state but not in a state that provides every seasonal sage grouse habitat need. There must be objectives established with language clarifying this issue in order for all objectives to be achievable in all situations and then a follow up objective when these circumstances apply.
    - The objectives in the DEIS provide for unnecessary subjectivity on what any objective means and is left up to agency discretion and individual or user translation, which may not be compatible. This will result in continued strife in managing GRSG habitat and will result in much more time in the courtroom. Defining SMART objectives will minimize personal interpretation and result in all parties being on the same page moving forward, even with conflicting interests. We reiterate that the objectives and management actions really need re-worked to be clear and get all users and land managers on the same page and to be consistent with our Master Plan.
- "Rangeland Health ratings, Riparian Functional Condition ratings, stubble height, and utilization levels are not suitable for goals or objectives that measure management success. Completion of each of these limited techniques as a precursor to design of additional studies is a reasonable objective within an AMP" (p. 6-8).
    - The DEIS establishes qualitative, rapid assessments, as measures of success in conserving GRSG habitat. Primarily, utilization and stubble-height standards and Proper Functioning Condition (PFC) are mis-used as standards and objectives to be met. We support and encourage these rapid assessments as a way to identify additional, quantitative based studies. The intended use of these techniques is to inform on adaptive management and to make timely management adjustments as necessary.

- "Wild fire and the period of time for recovery from fires has become a regulatory issue in Eureka County that has caused unreasonable economic hardship to Eureka County livestock producers. Properly managed grazing provides a substantial advantage for native plant recovery following fire. Prohibition of grazing following wildfire is not necessary for the recovery of rangeland vegetation. Managed grazing is beneficial in preventing excessive damage to plants by wildfire and prohibition of grazing prior to a fire results in unnecessary damage to the plants" (p. 6-8).
    - The DEIS includes provision to defer grazing after wildfires in all cases and does not fully recognize properly managed grazing as the best and primary tool to manage fuel loads before and immediately after fires. This must be included. Specifically, there needs to be inclusion of a methodology to allow for and streamline allocation of forage for fuels reduction in general and specifically including measures to allow for targeted cheatgrass control.
- Selection of the proper inventory or monitoring techniques and interpretation of the data will only be acceptable when performed by people whose judgment is the result of successful experience and well developed skills. Technical guidance as found within peer reviewed scientific publications and various agency or interagency handbooks and manuals serves as reference material and may be incorporated into this document upon approval by the Board of Eureka County Commissioners. Suitable reference material is included as attachments to this plan or by reference within the text. Reference material includes, for example: the *Nevada Best Management Practices*, USDA Natural Resource Conservation Service *Range and Pasture Handbook*, *Nevada Rangeland Monitoring Handbook* (1984 First Edition or 2006 Second Edition), *Standards and Guidelines for Grazing Administration* as written by the Association of Rangeland Consultants, March 12, 1996, *Standards and Guidelines* as written by the Northeast Great Basin Resource Advisory Council.
    - There is limited to no mention or incorporation of these peer reviewed and technically sound references that were developed specifically for Nevada.
- "Develop and implement Allotment Management Plans (AMP's) as follows: Within five (5) years on all "I" category, high priority allotments that do not already have current AMPs; within eight (8) years on all "I" category medium priority allotments; within ten (10) years on all other allotments" (p. 6-9).
    - This has not been done. If it had been followed when we initially proposed it our 2000 Master Plan, adequate measures would be in place on every allotment in Eureka County to conserve GRSG. Please incorporate this language into the DEIS.
- "Review and adjust livestock (grazing) stocking levels only in accordance with developed AMPs and/or trend in ecological status. Monitoring data, as obtained through the use of standardized rangeland studies such as ecological status inventory and frequency/trend monitoring completed at five (5) year intervals following implementation of AMPs, will be required for stocking level adjustments. Other studies such as Rangeland Health evaluation, Riparian Functional condition, stubble height, and livestock utilization may be useful as indicators of the need for additional examination and objective monitoring technique" (p. 6-10).
    - There are proposals across the DEIS alternatives to reduce grazing levels outside of AMPs or trend studies but instead based on utilization and qualitative and subjective triggers. Trend studies are extremely important because it provides the

flexibility for less than desirable management mistakes as long as the overall trend is upward.

- "Assure that adjudicated grazing preference held by permittees is authorized according to the governing Federal statutes and that Temporary Non Renewable use is authorized in a manner that allows for use of excess forage when available" (p. 6-10).
    - The DEIS contains grazing permit retirement language that is not conducive to the grazing preference criteria that determines that when a permittee no longer wishes to graze, the grazing permit would become available for continued use (not non-use) by another appropriate party. We have already provided comment related to the need to incorporate strong methodologies for timely and responsive authorizations of excess forage.
- "Develop prescribed fire and wildfire management plans to re-establish historic fire frequencies for appropriate vegetation types and include in such plans livestock grazing techniques as a tool for fire fuel management related to both wildfires and prescribed fires" (p. 6-10).
    - This is a major component missing from the DEIS. The condition of much of the Great Basin rangelands and coincident GRSG habitat is degraded due to a fire regime that is not conducive to health rangelands and GRSG habitats. The DEIS must develop strong measures to return fire to the landscape in a managed way, where appropriate, or use other techniques, primarily livestock grazing, to mimic fire and it's positive historic influences on the diverse and varietal needs of GRSG. The DEIS speaks to "limiting human influence on intact GRSG habitats" especially where cheatgrass is present. Unfortunately, even in areas where cheatgrass appears to be absent, a bioassay of the soils would show that there is, in fact, a seedbank of cheatgrass almost ubiquitously (see research by USDA-ARS (Charlie Clements) in Nevada regarding this matter). Protecting these areas from livestock use or other use with the excuse that they will allow "establishment" of cheatgrass is dangerous and short-sighted. These protections will create large, catastrophic fires that will bear the evidence of cheatgrass nonetheless. Regarding wildfire management, there should instead be a focus on ***increasing*** man's influence in these ecosystems to allow for active, progressive, adaptive management. The decline in GRSG is coincident with the increase of regulatory schemes and bureaucratic hoops that must be overcome to do anything on the ground. This too has resulted in increases of extent and cycle of wildfires. Man's influence has shaped where we are today and man's influence must be focused, strategic, and targeted to keep ***managing*** these lands for GRSG habitat and current and future generations. See great work by the USDA-ARS Research Station in Dubois, Idaho where active grazing management and prescribed burning to mimic the historic fire regime has created an increase in GRSG when neighboring BLM land has continued to see a decline in GRSG ("A Home on the Range", *Agricultural Research,* November/December 2006*).*
- "Develop grazing management plans following wild or prescribed fire through careful and considered consultation, coordination and cooperation with all affected permittees and affected landowners to provide for use of grazing animal management to enhance recovery" (p. 6-10).

- The DEIS does not lay out a process for this. Again, blanket closures to grazing after fire are proposed.

- "Develop and implement an aggressive pinyon pine, juniper, and shrub abatement and control plan for all sites where invasion and/or senescence due to age of a stand is adversely affecting desirable vegetation and/or wildlife. Development of such plans will include technical references to Woodland or Rangeland Ecological Sites and other appropriate interpretations of specific soil series within a Soil Survey. Whenever possible, plans to reduce the density of Pinyon or Juniper will emphasize removal and use of the material for firewood, posts, or commercial products including chips for energy production. This item depends on continued access to all areas that are subject to future woodland manipulation" (p. 6-10).
  - While the DEIS acknowledges pinyon-juniper (PJ) encroachment and speaks to vegetation management of these issues, there is limited and general focus on the need to also address sagebrush and other shrub encroachment (such is rabbitbrush into meadows) and senescence (such as single age and decadent stands of sagebrush). If ESDs are followed, the areas, density, and cover of brush would be able to be targeted to approach ecological potential. Many of the vegetation/habitat objectives focus on values of sagebrush cover without consideration of site potential and conditions (state). Further, there is no effort in the DEIS to address utilization of biomass from PJ as a means to incentive treatments and return dollars to the economy. Please include.
- "Manage wildlife at levels (population numbers) that preclude adverse impacts to soil, water and vegetation until monitoring studies and allotment evaluations demonstrate that population adjustments are warranted by changing resource conditions. Seek to restore…sage grouse population numbers to the levels observed in the mid-1900s" (p. 6-10).
  - With the myopic view focused on habitat, the DEIS fails to address this policy because there will never be enough GRSG. There needs to be clear indications of when management will be enough to protect the bird from extinction.
- "Manage wild horse and burro populations within Herd Management Areas (HMAs) at levels (population numbers) that preclude adverse impacts to soil, water and vegetation until monitoring studies and allotment evaluations demonstrate that population adjustments are warranted by changing resource conditions" (p. 6-10).
  - This DEIS fails to acknowledge that wild horse and burro populations (WH&B) remain on the public lands on a year round basis and are not managed for the benefit of the rangeland resource that supports their very existence. Only their numbers are attempted to be controlled, but with minimal success. There typically are no rest periods for the range in HAs or HMAs, riparian areas nor wetland meadows. Numbers control is all that the BLM have available to them today to effectively manage horses, and even that is being heavily impacted through the budget process. In addition, any attempts to restore rangelands within HMA's would be most challenging due to the restrictions that would be applied when attempting to protect a new seeding or defer use from an area for a period of time to allow for natural regeneration. Fencing and other structural improvements would also become a real challenge. Given the actual performance record of BLM in Nevada and the exceedingly over-abundance and out-of-control

numbers, how will the actual corrections be brought about that the DEIS proposes? Beyond excuses for not having enough resources, what confidence can there be that BLM will not continue to practice the management process of "do as we say, not as we do"? BLM should not "target" the uses of public land that are easy-picking without first addressing the mismanagement of the uses that are under the primary jurisdiction of the BLM itself. The BLM's failure to properly manage WH&B has created a situation, in many cases, where the burden is now on the other users of the land, primarily ranchers, to pay the price for BLM's shortfall. The DEIS needs to be frank and propose real, actionable solutions to the WH&B issue in order to be consistent with our Plan.

- "Prevent the introduction, invasion or expansion of undesirable plants and noxious weeds into native rangelands and improve the ecological status of sites that are currently invaded by undesirable plants or noxious weeds by integrating, through consultation with the Eureka County Weed District and Eureka County Department of Natural Resources, appropriate control methods into all planning efforts. Prescriptions for control of undesirable plants and noxious weeds may include, but are not limited to burning, grazing, mechanical, manual, biological and chemical methods" (p. 6-11)
    - There has been no effort by BLM to consult with the Eureka County entities, primarily the Weed District which has legal authority, through Nevada law, over weed control in Eureka County.
- "Monitoring: Document ecological status and trend data obtained through rangeland studies supplemented with actual use, utilization (use pattern mapping), and climatic data in accordance with the N*evada Rangeland Monitoring Handbook*; Document ecological sites or forage suitability groups, and ecological similarity index as defined by NRCS *National Range and Pasture Handbook*, with specific reference to ecological status and trend data and "State and Transition" interpretations of ecological status; Document progress in the development and implementation of Allotment Management Plans; Document the development and implementation of Pinyon pine, juniper, and shrub abatement, control, or harvest plan(s); Annually review and document wild horse herd population inventories, and conduct inventories when necessary, including reports of wild horse movement, grazing habits, numbers and other data provided by permittees, lessees and landowners" (p. 6-11)
    - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.
- "Forage and Livestock Grazing; GOAL: Provide for landscape vegetation maintenance and improvement that will: 1) support restoration of suspended AUMs; 2) support allocation of continuously available temporary non-renewable use as active preference; 3) support allocation of forage produced in excess of the original adjudicated amounts where greater amounts of forage are demonstrated to be present; 4) restore livestock numbers of individual ranches to at least the full levels at the time of grazing allotment adjudications; and 5) restore wildlife populations to those peak levels of the mid-1990's" (p. (6-13).
    - The DEIS has actions directly opposed to these goals and frames livestock grazing as antithetical to wildlife habitat and wildlife populations, including GRSG. We argue that the empirical evidence linking the highest numbers of GRSG to periods

of high livestock numbers and predator control is not to be dismissed. We argue that this was the case because at the time, active management was allowed, range improvements (including water developments) were promoted, and vegetation manipulation was carried out. This needs to be acknowledged and implemented at part of the preferred alternative.

- "Congress mandates stabilization of the local livestock industry in such laws as the Taylor Grazing Act (TGA) and the Forest Service Organic Act (FSOA) by providing for the orderly use, improvement, and development of the range in a manner which adequately safeguards property rights including rights-of-way, easements, vested grazing and water rights. Regulation under these laws will not impair the value of the grazing unit of the permittee when such unit is pledged as debt security by the permittee; Public Rangeland Improvement Act (PRIA) provides that the Bureau of Land Management administered lands be managed in accordance with the Taylor Grazing Act. PRIA further provides that the range should be made "as productive as feasible" in accordance with the Congressional objective of preventing "economic disruption and harm to the western livestock industry". PRIA mandates improvement of the rangelands in order to expand the forage resource and increase the resulting benefits to livestock and wildlife production.; In the Federal Land Policy & Management Act (FLPMA) Congress directs that the BLM administered lands be managed in a manner which "recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands". The National Environmental Policy Act requires consideration of all environmental actions on the culture, heritage and custom of local government (16 U.S.C. sec. 4331 (a)(4). Current active preference and continuously available supplemental use is considered the established allowable use for livestock grazing. The Forest Service is obligated to consider and provide for "community stability" in accordance with the National Forest Management Act (NFMA) and other National Forest related legislation dating back to the 1890's" (p. 6-13).
    - The actions outlined in the DEIS will impair the valid existing rights appurtenant to ranches with grazing permits and will threaten the ranches viability. Further, the actions in the DEIS will further erode the stability of the livestock industry which is a basis for our local, long-term stable economy.
- "Essentially all rangeland use and value is dependent upon maintenance and enhancement of the primary landscape resources of soils, vegetation, and watersheds. August L. Hormay states that "…all renewable rangeland values stem directly or indirectly from vegetation. Sustained high-level production of these values therefore depends on proper management of the vegetation. The principal tool the rangeland manager has for managing vegetation is livestock grazing. It is the only force under firm control of the manager that can be applied on practically the entire range area.…desirable vegetation and the overall productive capacity of rangelands can be increased more rapidly with livestock grazing than without.…Livestock can be used to trample seed into the soil thereby promoting more forage and a better soil cover; to remove stifling old growth on plants, thus increasing plant vigor and production of useable herbage; to stimulate adventitious growth and higher quality forage; and to reduce fire hazard." (emphasis added) ("Principles of Rest-Rotation and Multiple-Use Land Management" USFS Training Text No. 4(2200)). Hormay explained that grazing management that is based on the physiological status and phenological development of the plants is the basis for keeping

plants healthy and vigorous. Utilization levels have essentially no bearing on the longevity of the plants and very little value in management decisions. The principles of plant physiology as the basis for vegetation management taught by Hormay and other experts are a sound basis for grazing management in Eureka County. Eureka County natural resource strategy includes management based on the renewable nature of Eureka County's vegetation resources" (p. 6-14).

  - The DEIS actions for grazing are not based on this concept and grazing is generally disregarded as probably the best tool available for BLM to manage GRSG habitat to meet resource objectives while also stabilizing local economies and the industry uses of the land.

- "Implement rangeland improvement programs, including but not limited to water developments, rangeland restoration, pinyon-juniper and shrub control, and weed control to increase forage production; improve livestock grazing management, raise stocking rates, and achieve other multiple use goals. It is the policy of Eureka County that water rights for livestock uses are to be held solely in the name of the permittee and not held jointly with a federal or state agency (see comment below)" (p. 6-14).
  - These active management actions are given short shrift in the DEIS and the underlying tone and bias is towards protectionism rather than incentivized conservation through continues sustainable use. Grazing can continue and even increase beyond what is currently permitted all while benefitting GRSG and rangeland health. It just takes a commitment by BLM for locally driven, results based, active, adaptive management. We will achieve positive results if BLM will adopt our plan and allow for active, locally led conservation.
- "Identify and develop off-stream water sources where such opportunities exist in all allotment pastures with sensitive riparian areas and in all allotments where improved livestock distribution will result from such development" (p. 6-14).
  - The primary limiting factor in cases where livestock and WH&B management is poor is the lack of distributed water and/or the only water source being located in sensitive riparian zones. Rather than focusing on an action to increase water distribution and developing off-stream water sources, the DEIS focuses on restriction of grazing in riparian zones and proposed removal of water developments in some cases. The mentality needs to be flipped with a strong bias to development of new and maintenance of existing water developments. This would increase the management options available and would allow for timely adjustments needed to head off resource degradation.
- "Identify and implement all economically and technically feasible livestock distribution, forage production enhancement, and weed control programs before seeking changes in livestock stocking rates" (p. 6-14).
  - The DEIS focuses on livestock reductions and restrictions before identification and implementation of all other management tools cited here.
  - Eureka County has a long-standing policy of "no-net-loss of AUMs." This is an interpretation of our various policies already cited. What this means is that forage, if impacted, must be mitigated even if there is a gross (versus net) reduction. Eureka County has applied this policy for many years. The Board of Commissioners passed a resolution that we supplied BLM in 2010 that outlined the County policy related to loss of grazing forage and how all mitigation measures

must be first contemplated before a change in stocking rate. There were other resolutions passed by previous Boards outlining similar policy statements. This is an example of a "formally adopted policy statement" clarified by CEQ in their 40 FAQ regarding 40 CFR 1502.16(a)(5). The resolution specifically states "Before imposing grazing restrictions or seeking changes in livestock stocking rates or seasons of permitted use, federal agencies in coordination with grazing permittees must identify and implement all economically and technically feasible livestock distribution, forage production enhancement, weed control programs, prescribed grazing systems, off-site water development by the water rights holder, shrub and pinyon/juniper control, livestock salting/supplementing plans, and establishment of riparian pastures and herding." When our Plan (and County Code) speak to "no-net-loss policy with respect to private land and private property rights" this would include grazing forage as our Plan clearly points out in many locations. A grazing permit is considered private property and is attached (mandatorily) to private, base property through the Taylor Grazing Act. Our understanding and application of a grazing permit as private property does match the definition provided. Our Master Plan (and similarly in the County Code) in many places speaks to the nature of this private property right and there is lengthy discussion of this matter on Pages 6-16 through 6-19 of the Natural Resources & Federal or State Land Use Element.

- "Identify and initiate reductions in stocking levels only after monitoring data demonstrates that grazing management including range improvements and specialized grazing systems are not supporting basic soil, vegetation and watershed goals" (p. 6-14).
    - The monitoring proposals in the DEIS focus on blanket criteria, utilization standards, and indicator based approaches. These are fine only as long as they help focus where additional monitoring is needed and to make adjustments in management along the way. The DEIS proposed to reduce and restrict grazing based on these subjective monitoring techniques. Trend monitoring, over multiple years, and objective monitoring of ecosystem function is imperative before any reduction or restriction in grazing. Snapshot monitoring at one point in time (as is often the case with the qualitative techniques) does not inform on whether progress is being made towards objectives and standards.
- "Assure that all grazing management actions and strategies fully consider impact on property rights of inholders and adjacent private land owners and consider the potential impacts of such actions on grazing animal health and productivity" (p. 6-15).
        - There is a general disregard in the DEIS of the impacts to private property, including water rights, in the DEIS. While evaluating the ramifications of possible curtailment of livestock grazing use, consideration should take into account the linkage between private ranch lands and federal land permits. Although we don't agree with the perspective that curtailment of properly-managed livestock grazing will have a beneficial result, we do want to stress the potential negative consequences for GSG habitat on private lands, if a livestock grazing permit is not allowed to be used. In order to maintain business operations, possible conversion of private land holdings may result from not being able to make use of federally-managed lands. More intensive land use of these private resources could result in a

negative outcome for habitat located on private land; In areas where private lands and federally-managed lands are found in alternating sections (i.e., "checkerboard" lands) or where private lands make up a significant portion of large tracts of habitat, this increase in fragmentation would undoubtedly be far more of a problem and impact on GRSG.

- "Where monitoring history, actual use or authorization of Temporary Non-renewable grazing (TNR) demonstrates that supplemental use is continuously available, and can or should be used to improve or protect rangelands (e.g., reduction of fuel loads to prevent recurring wildfire), initiate a process to allocate such use to permittees as active grazing preference; Authorize use of supplemental forage during those years when climatic conditions result in additional availability" (p. 6-15).
    - The DEIS fails to acknowledge or implement a process for TNR or access to additional forage and conversion to active grazing preference if the criteria in our Plan is met.
- "Temporary 'voluntary non-use' of all or a portion of adjudicated forage is necessary on occasion due to drought, economic difficulties, animal health, etc., and is an acceptable management strategy. 'Voluntary non-use' for the purpose of long-term or permanent retirement of a grazing allotment is detrimental to the economic stability of Eureka County and will be opposed by the Board of Eureka County Commissioners" (p. 6-15).
    - The DEIS separates actively used AUMs from voluntary non-use AUMs. This frames the reality that permittees will likely never be able to activate the non-use AUMs under the DEIS options.
- "Monitoring: Document the amount of livestock use through review of actual use, authorized active use, suspended use and temporary nonrenewable use; document livestock production or performance when available; document all rangeland and livestock management improvement programs as to acres affected by vegetation manipulation, water development, specialized grazing systems and weed control; document grazing use in each allotment through use pattern mapping for the purpose of recording livestock or wildlife distribution patterns and identifying additional monitoring techniques that are needed. Utilization monitoring is not a suitable measure for calculating stocking rates; document the direction of rangeland trend and seral class acreage changes that support changes in the amount of use being authorized or denied; document all decisions or agreements resulting in changes in active preference and approvals or denial of applications for supplemental use" (p. 6-15).
    - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.
- "Identification of goals for riparian vegetation attributes must be realistic and attainable based on the dependability of surface or subsurface water regimes, climate as determined by elevations, soil and substrate characteristics, and the likelihood of unacceptable impacts on other uses within the riparian area and surrounding uplands" (p. 6-20).
    - Habitat objectives in the DEIS related to riparian zones are one-size-fits-all and do not take into account the drivers that shape riparian vegetation. Further, the actions proposed for riparian vegetation fail to take into account and analyze the

impact and impairment of water rights and potentially increased impacts on other rangeland sites.

- "Select or develop site specific Best Management Practices (BMP's) through allotment management plans for…riparian areas and aquatic habitats" (p. 6-20).
    - BMPs and riparian zone actions are one-size-fits-all and do not give credence to development of AMPs based on site-specific conditions and drivers.
- "BMP's include but are not limited to: prescribed grazing systems, off-site water development, shrub and pinyon/juniper control, livestock salting plans, establishment of riparian pastures and herding" (p. 6-20).
    - Some of these measures are given a perfunctory nod in the DEIS, but restriction, prohibition, and protectionism are elevated above these other active management options. Active management incorporating these proposed actions should be the first action with restriction, deferment, and prohibition being the last option when all else has failed.
- "Develop management plans for multiple recreation uses in high erosion hazard watersheds, or watersheds where accelerated erosion is occurring, which assure that planning documents and/or other agreements which alter multiple recreation use are formulated through coordination with the Natural Resource Advisory Commission which includes representatives of recreational groups" (p. 6-20).
    - This is not a component of the DEIS and should be.
- "Provide for the development and maintenance of water conveyance systems (i.e. provide for livestock watering systems, irrigation diversions, and domestic or municipal uses)" (p. 6-21).
    - The primary limiting factor in cases where livestock and WH&B management is poor is the lack of distributed water and/or the only water source being located in sensitive riparian zones. Rather than focusing on an action to increase water distribution and developing off-stream water sources, the DEIS focuses on restriction of grazing in riparian zones and proposed removal of water developments in some cases. The mentality needs to be flipped with a strong bias to development of new and maintenance of existing water developments. This would increase the management options available and would allow for timely adjustments needed to head off resource degradation.
- "Monitoring: Document progress in the development of AMP's including site specific BMP's and their implementation; document the development and implementation of multiple recreational use plans for specific high erosion areas; document impacts of wild horses, wildlife, and multiple recreation use on riparian and aquatic habitat" (p. 6-21).
    - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.
- "Wildlife and Wildlife Habitat; GOAL: Maintain, improve or mitigate wildlife impacts to habitat in order to sustain viable and harvestable populations of big game and upland game species as well as wetland/riparian habitat for waterfowl, fur bearers and a diversity of other game and non-game species" (p. 6-21).
    - The single species focus on the GRSG does not holistically address the other species that may be impacted by the actions proposed in the DEIS.

- "Realistic and attainable wildlife population goals have as a baseline, the historical observations of wildlife populations at the time of European settlement, which indicate that wildlife populations were generally sparse with very few…sage grouse being observed by early explorers. Archeological interpretations support this scarcity of animals and birds. Wildlife populations at levels of those existing at the time of European settlement is the best that natural Eureka County habitats can provide. Wildlife populations increased in the mid-1900s, following the establishment of ranches and farms, and the continuation of the preferred wildlife populations will require positive management actions in response to local community concerns. Community economic concerns and values will be obtained from the Eureka County Wildlife Advisory Board, Eureka County Natural Resources Advisory Commission, Eureka County Economic Development Board and the Board of Eureka County Commissioners; the voice of Eureka County citizens provides the basis for wildlife and wildlife habitat management investments" (p. 6-24).
    - We find the actions being proposed in the DEIS are at odds with the conditions and population of GRSG that existed before humans actively managed their landscapes in the Great Basin. The DEIS needs to square with this inconsistency and empirical information. The DEIS needs to be based on reality, especially if the protectionist actions are implemented, that wildlife populations at levels of those existing at the time of European settlement is the best that natural Eureka County habitats can provide. Numbers of GRSG increased with active human management based on use and will only be conserved with active human management based on use.
- "Accelerate the planning, approval and completion of multiple-use water developments, rangeland treatment projects and prescribed burns that include objectives for enhancement of … wildlife habitat. Wildlife developments must be cooperative in nature, respecting the rights and interests of existing resource users" (p. 6-25).
    - On this matter, the DEIS falls short. We have proposed to BLM proactive cooperative measures that meets this objective and respects rights and uses. Our proposals have received no action by BLM and have been completely disregarded. We request more robust inclusion on active developments and projects and a process for streamlining of project approval for projects that are proposed for uses that are designed to benefit GRSG too.
- "Assure that management agencies provide all necessary maintenance of enclosure fences not specifically placed for improved management of livestock" (p. 6-25).
    - Where the DEIS proposes to remove existing fences rather than maintain is inconsistent with our Plan. Properly maintained fences are integral to livestock management and wild horse management.
- "Initiate cooperative studies with willing private land owners, of wildlife depredation and related concerns regarding wildlife habitat on private land" (p. 6-25).
    - The DEIS has a basic omission of working holistically with private land owners to truly benefit the GRSG that use both private and federally administered lands. Instead, the actions in the DEIS will impact private land and will likely increase pressures on privately held GRSG habitats.
- "Monitoring: Document the participation of affected parties in the development and establishment of population targets and management guidelines…; document the

inclusion of wildlife habitat objectives in activity plans and BLM approved Reclamation Plans; document the location and extent of water developments and vegetation manipulation projects and prescribed fires for wildlife habitat improvement and provide timely notification to all affected parties; periodically monitor range improvement projects, rights-of-way, woodcuts, mining activities, multiple recreation uses, and materials leases, to document habitat improvement or disturbance; document the incidents of wildlife depredation and extent of game animal harvest in designated management areas of both land and wildlife management agencies" (p. 6-26).

  - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.

- "Land Tenure; GOAL: Utilize, to the greatest extent possible, agricultural or mining entry, land exchange, and or land sale for disposal of all public lands which by virtue of their size or location render them difficult and expensive to manage and do not serve a significant public need or where disposal will serve important public objectives. Authorize as needed the use of those lands, not currently authorized, for rights-of-way, leases and permits. Fully recognize and protect existing property rights including rights-of-way, easement, water rights, forage rights, mineral rights, and other such property" (p. 6-26); "Eureka County will encourage transfer of non-patented lands to private ownership; Eureka County will discourage transfer of private land to public ownership" (p. 7-8).
  - Many actions in the DEIS are directly antithetical to this goal. Withdrawal of lands already categorized as suitable for disposal, especially in Diamond Valley, is not based on conditions on the ground and severely limits our future community expansion plans and economic development opportunities. It is the definition of arbitrary and capricious to have lands marked suitable for disposal not suddenly not meeting the FLPMA criteria and proposed to no longer be suitable for disposal.
- "Identify and give priority consideration to requests for exchanges or purchases from private land owners with fenced federal range, isolated tracts, or irregular boundary lines" (p. 6-27).
  - Only accommodation for this in the DEIS is for checkerboard lands and only for exchange. This will severely limit opportunities for all stakeholders to create win-win situations for blocking up of land that would also benefit GRSG.
- "Encourage property owners to identify and record existing property rights, particularly those that predate FLPMA. Eureka County recognizes the minimum width of rights of way to be 50 feet on either side of a water conveyance ditch, pipeline, or flume as established under the 1866 Mining Act and further recognizes that the width of rights-of-way established under R.S.2477 to be from 100 feet to several miles wide and limited only by practical conditions. All necessary actions for maintenance of ditches, pipelines, flumes, roads, trails, or other infrastructure for water conveyance or travel within these rights-of-ways is hereby approved by Eureka County" (p. 6-27).
  - The DEIS proposes actions that will severely impair and impede the valid existing rights of Eureka County and many of its citizens. RS 2477 and RS 2339 rights are overlooked and not acknowledged.
- "Seek legal administrative access only through purchase or exchange where significant administrative need exists, construct new roads around private lands where easement

acquisition is not feasible, and consider significant public access needs in all land tenure adjustment transactions" (p. 6-28).

  - BLM unilaterally assert jurisdiction on County and private rights-of-way in which they have no authority or jurisdiction. This ranges from road closures and travel restrictions to removal of water conveyances (RS 2339).

- "Locatable Minerals, Fluid Minerals, and Mineral Materials; GOAL: Facilitate environmentally responsible exploration, development and reclamation of oil, gas, geothermal, locatable minerals, aggregate and similar resources on federal lands" (p. 6-28).
  - The blanket rules and actions put forward do not allow for any flexibility to allow for responsible development of these resources. This is especially true regarding the proposals to close areas to mineral entry and/or oil and gas lease. Each project and proposal should be evaluated by its own merits instead of holding every project proponent at bay with one-size-fits-all approaches.
- "The Mineral Leasing Act of 1920 as amended, Geothermal Steam Act of 1970, as amended, the Mining and Mineral Policy Act of 1970, all declare that it is the continuing policy of the federal government to foster and encourage private enterprise in the development of domestic mineral resources. The 1872 Mining Law along with the Mining and Mineral Policy Act of 1970 declares that it is the continuing policy of the United States to foster and encourage private enterprise in the development of domestic mineral resources. The Federal Land Policy & Management Act, reiterates that the Mining and Minerals Policy Act of 1970 is to be implemented and directs that the BLM administered lands are to be managed in a manner which recognizes the nation's need for domestic sources of minerals and other resources. The National Materials and Minerals Policy, Research and Development Act of 1980 restates the need to implement the 1970 Act and requires the Secretary of the Interior to improve the quality of minerals data in land use decision making. The Mining Law of 1866 guaranteed certain rights which allow for orderly and efficient use of the public lands for commerce" (p. 6-29)
  - While valid existing rights are given a nod in the DEIS, the restrictions proposed in the DEIS will indirectly impair and affect the ability of industry to meet the present and future mineral needs of our region and nation.
- In coordination with federal agencies and state and local government planning agencies and in cooperation with interested members of the public, develop a land management mineral classification plan to evaluate, classify and inventory the potential for locatable mineral, oil, gas and geothermal, and material mineral exploration or development, to insure that lands shall remain open and available unless withdrawn by Congress or federal administrative action. To the extent practicable, land with high mineral or oil and gas values shall remain open for economic use" (p. 6-29).
  - This coordination and process has not occurred and was not included in the DEIS.
- "Woodland Resources; GOAL: Maintain or improve aspen and conifer tree health, vegetation diversity, wildlife and watershed values through active management of sites with the ecological potential for aspen, pinyon, or juniper woodlands and initiate thinning, removal, or other management measures; unrestricted invasion of Pinyon and Juniper into plant communities that have the ecological potential of rangeland results in loss of wildlife habitat, loss of livestock forage, reduced water flow from springs and streams, and increased soil erosion; plan and implement, where necessary and useful,

programs to improve Pinion and juniper woodland health, e.g.: selective fence post and firewood harvesting, or other operations such as green-cuts; plan and implement removal of pinyon or juniper from plant communities that are identified as non-woodland (rangeland) ecological sites and restore the vegetation that is appropriate for those respective sites; document woodland product harvest activities on the BLM and FS administered lands as necessary to promote customary economic use of woodland resources (i.e. pine nuts, firewood, posts, Christmas trees, etc.); plan and implement wildlife habitat improvements and grazing management strategies designed to enhance…pinyon-juniper….; document, report to responsible agencies and ensure mitigating management actions for the occurrence of insects and diseases that threaten the health of woodland resources" (p. 6-31).

  - In large, the failure or inability of the federal agencies to proactively manage PJ according to proper fire cycles and ESD has now pushed the burden to other users of the land to pay the price and face severe regulatory restrictions. We have tried for years to work with BLM to move forward with PJ projects and have been disregarded and downplayed. The DEIS must implement the provisions of our Plan and provide the analysis necessary to achieve large scale removal of encroaching PJ and pair industry utilization of the biomass.

- "Hunting, Fishing, and Outdoor Recreation; GOALS: Provide for multiple recreation uses on Eureka County federal…lands located within its boundaries for residents and visitors to the County. Provide recreational uses including high quality recreational opportunities and experiences at developed and dispersed/undeveloped recreation sites by allowing historic uses and access while maintaining existing amenities and by providing new recreation sites for public enjoyment. Pursue increased public access opportunities in both motorized and non-motorized settings through the acquisition of rights-of-way or easements across federal administered lands…. Recognize that multiple recreation uses are mandated by the multiple use concepts and that adequate outdoor recreation resources must be provided on the federal administered areas; keeping open all existing access roads and the ability to maintain those same roads or accesses; These historically accessed areas include roads, trails, sandwashes, and waterways identified as Revised Statute 2477 rights-of-ways, including those areas where wild horses may be located"
- (p. 6-33).
  - The DEIS proposals will affect hunting, fishing, and outdoor recreation, primarily through impacts to existing rights-of-way and travel restrictions. Neither BLM nor USFS have authority or jurisdiction over RS 2477 rights-of-way.
- Provide for adequate outdoor recreation resources by revising the designated areas to decrease or eliminate limitations and restrictions where the review and evaluation shows that the limitations and restrictions are no longer appropriate and necessary; plan and establish designated equestrian, foot, and off-road vehicle trail systems for compatible recreational, agricultural, and other multiple uses so that such uses can continue unabated; describe methods of minimizing or mitigating documented use conflicts or damage and define the manner in which each method is expected to accomplish minimization or mitigation. All recreation promotion will include explanation of the contribution of private property owners to wildlife habitat, recreation access, and recreation sites" (p. 6-34)

    - These requirements were not followed in the DEIS when outlining measures for management of recreation. The DEIS proposals will affect hunting, fishing, and outdoor recreation, primarily through impacts to existing rights-of-way and travel restrictions.
- "Monitoring: Collect, review and analyze data relating to the demand for recreation use, the impact of the various recreation uses on land values, and any actual conflict or damage caused by each of the multiple recreation uses; in coordination with federal agencies and state and local planning agencies, review all data to determine whether temporary climatic conditions, wildlife activities, or range conditions require temporary or seasonal restrictions or limitations on historic and present recreation uses, and review data to determine the earliest point at which temporary restrictions or limitations can be removed; collect and maintain data obtained during meetings and discussions with recreation users; collect and maintain data obtained from community business owners concerning business contacts, sales, and future expectations from recreationists; collect and maintain records of all management actions taken specifically to meet requirements of the Americans with Disabilities Act (ADA) and maintain records of use and requests for use from ADA eligible individual; investigate, validate and document all user conflicts reported…; ederal agencies.
    - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.
- "Wilderness, Wilderness Study Areas (WSA), Areas of Critical Environmental Concern (ACEC), and Other Restrictive Land Use Classifications; GOAL: Seek immediate Congressional designation action on all WSAs and other restrictive land classifications based on Eureka County policy to release these areas for multiple use management and in the interim prevent, minimize or mitigate impairment or degradation of such areas to the extent that Congressional actions are not pre-empted. Provide the amenities promised by wilderness designation through multiple use management that includes dispersed recreation where appropriate and opportunities for solitude" (p. 6-35).
    - The overly-restrictive components in the classification of ACECs are inconsistent with our Plan.
- "Existing land uses and pre-existing property rights are described in other sections of this Natural Resource and Land Use Plan. Every area of Eureka County includes pre-existing property rights and existing uses that are best served through multiple use management. Eureka County is committed to the protection of those existing rights" (p. 6-36).
    - The DEIS restrictive land classifications, designations, especially the ACECs, fails to acknowledge and address the impacts to existing rights, primarily water rights, rights-of-way, and mineral rights.
- "As discussed within the Eureka County Master Plan, Eureka County is committed to future development of mining, communication infrastructure, and energy production. Locations for many of the future developments cannot be identified at this time, therefore all currently available land must remain available and not included into Wilderness Areas, Roadless Areas, ACEC, or other restrictive designations" (p. 6-37).
    - The DEIS must build in management flexibility to allow for development of resources of importance and community expansion. Implementation of our plan

would allow for this flexibility, reasonable and environmentally sound development, while also conserving GRSG and providing for rangeland health.

- "Provide for optimum scenic value in Eureka County through achievement of vegetation and soils watershed objectives and implementation of nondegrading, nonimparing range improvement activities, construction, use and maintenance of livestock management facilities, and facilities for public enjoyment of the land" (p. 6-37).
    - The full suite of these de minimis activities is not allowed under the DEIS alternatives.
- "Identify measurable accomplishments or benefits that will be obtained through future designation of restricted use areas; no designation of restricted use areas such as Roadless, ACEC, or others will be completed until it is clearly demonstrated that such designations will not be detrimental to existing property rights, recreation including hunting or fishing, livestock grazing management, wildlife habitat management, County administrative needs, and future mining or energy development" (p. 6-37).
    - These criteria were not followed or met in designation of ACECs and restricted areas/uses in PPMA and PGMA.
- "Monitoring; Track the data obtained from rangeland studies and document the location, pace, and extent, of trends in rangeland vegetation and soil stability; collect data regarding the multiple recreation uses occurring in areas designated or being subjected to potentiality study for special designation such as ACEC or wilderness" (p. 6-38)
    - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.

Inconsistencies with State and Local Plans and Laws (40 CFR 1506.2(d))

In 40 CFR 1506.2(d), BLM is required "discuss any inconsistency of a proposed action with any approved…local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law."

Since the discussion on conflicts (and by extension, inconsistencies) with plans and policies has already been discussed above, we focus here on inconsistencies with State and local laws.

As we already pointed out, Eureka County policies outlined in the Master Plan have been formally adopted as local law by being codified in the County Code. BLM must consider these same items conflict with plans and policies as also inconsistent with local law. Additionally, the following is from our County Code Title 9, in which the same inconsistencies and conflicts highlighted above must be reconciled in the DEIS alternatives and analyses. Areas of conflict and inconsistency or which BLM must pay particular attention are emphasized in ***bold italics***.

<u>Eureka County Code, Title 9</u>

.020 Purpose - The purpose of this Chapter is to (1) guide County policy with respect to natural resource issues facing Eureka County, (2) ***provide a framework to guide federal agencies in land***

use planning on federal lands as per the National Environmental Policy Act of 1969, the Federal Lands Policy and Management Act of 1976, the National Forest Management Act of 1976, the Threatened and Endangered Species Act of 1973, and other applicable laws and executive orders, and (3) ***safeguard property rights and other customary usage rights of the citizens of Eureka County***, the State of Nevada, and the United States against any and all encroachments upon those rights by individuals, groups, corporations, public agencies, non-governmental organizations, or any other entity which may attempt to take private property, trespass upon private property or infringe upon other customary rights as have been established by the constitutions, laws and customs of the United States, the State of Nevada, and Eureka County. This title is meant to complement and supplement the constitutions and laws of the United States, the State of Nevada, and Eureka County with additional means of protection and enforcement. This Chapter is not intended to create new rights nor is it intended to in any way supplant the lawful authority of individuals, groups, organizations, corporations, governments or other entities which act pursuant to the laws of constitutions of the United States, the State of Nevada, and Eureka County.

.030 Adoption of the Eureka County Natural Resources and Land Use Plan

A. Holding that the American ***people are best served when government affairs are conducted as closely to the people as possible (i.e., at the County level***), the citizens of Eureka County, through the Eureka County Board of Commissioners, adopt the Eureka County Natural Resources and Land Use Plan as provided in this chapter.
B. The ***Eureka County Natural Resources and Land Use Plan shall serve as the primary guide for the use and management of all natural resources and state and federal lands within Eureka County.***

.040 Custom and culture

A. Since the time that aboriginal peoples inhabited what is now Eureka County, local custom and culture has revolved around ***beneficial use of natural resources***. Aboriginal peoples harvested native plants, animals and geologic material to provide nearly all the raw material for their tools, shelter and sustenance. What was not found locally was traded with other communities in and around the Great Basin. In similar fashion, early European miners, ranchers and farmers lived largely within the bounds of what they could obtain from the natural environment.
B. With the early gold and silver finds in the mid-1800s came Cornish and Irish miners, Italian charcoal burners (Carbonari), Germans, Swiss, French, Russians, Chinese, and others contributing to mining and support industries, and defining the early custom and culture of Eureka County. The signing of the Treaty of Guadalupe-Hidalgo in 1848 concluded the Mexican-American War and enlarged the borders of the United States to include what is now Eureka County. Upon ratification of the Treaty, the United States acquired and managed this territory as sovereign and proprietor under the Property Clause of the U.S. Constitution. ***Legal traditions of property rights that existed*** under Mexican law prior to the establishment of Nevada as a Territory of the United States ***remain intact today as they are consistent with the U.S. Constitution and laws of the United States***. ***Prior existing property rights including, but not limited to water rights based on the doctrine of prior appropriation, forage rights based on the ownership of water rights and land, rights-of-way, and ownership of real property, are explicitly preserved by all federal land***

laws. Preservation of these rights demonstrates their importance to the custom, culture and economy of Eureka County and the west.

C. The burgeoning mining camps brought Basque sheepmen who ran sheep in most of the mountains and valleys in Eureka County. On their heels came cattlemen and other settlers who, with the help of the 1877 Desert Lands Act, the Act of 1888, the Act of 1890, the 1891 Creative Act, and the 1916 Stock Raising Homestead Act, established privately-owned base properties to support permanent range livestock operations and farms. Competition among livestock interests resulted in the passage of the 1925 Nevada Livestock Watering Law. A component of this law, locally known as the Three Mile Rule, made it a misdemeanor for a stockman to allow his animals to graze within three miles of a watering site owned by another stockman. The federal government responded to disputes among stockmen and over-use of the federal ranges by passing the 1934 Taylor Grazing Act. The Taylor Grazing Act superseded Nevada's Livestock Watering Law; however, it did not extinguish any prior existing property rights. These property rights withstanding, the Taylor Grazing Act gave the Secretary of the Interior broad discretion to manage public land through rules and regulations and provided that all future grazing on public land be allowed only via grazing permits. The system of management adopted by the Secretary of Interior under the Act provided for (1) adjudication of federal ranges, (2) issuance of revocable licenses with preference given to existing grazers owning commensurate base property, and (3) establishment of Grazing Districts. Graziers in Eureka County and Elko County established the N-1 Grazing District in 1935. Graziers in Eureka County, Lander County, and Nye County established the N-6 Grazing District in 1951. Early efforts of the State of Nevada to preserve customary grazing rights (e.g., 1925 Nevada Livestock Watering Law) and recognition of these rights by subsequent federal laws (e.g., TGA, FLMPA, and PRIA) demonstrate the importance of livestock grazing to the region's custom and culture. ***The continued importance of livestock grazing and impacts of federal lands management decisions to citizens of contemporary Eureka County is reflected in establishment of the Eureka County Public Lands Advisory Commission in 1994 and the Eureka County Department of Natural Resources in 1995.***

D. Commensurate with development of arable land and distributed water in Eureka County, ***livestock numbers grew steadily until their peak in the 1940s and 1950s. With these changes came increased wildlife***. Populations of mule deer increased across the state until they peaked in the 1940s and 1950s. Similar trends are observed for sage grouse. ***Downward trends in these wildlife species, beginning in the 1960s, are commensurate with declines in permitted livestock on federal ranges and continues into the present decade.***

E. ***Access to resources on federal lands and the right to pass uninhibited across federal lands are important historical components of the Eureka County's custom and culture***. In 1859 Captain James Simpson of the U.S. Corps of Topographical Engineers surveyed the Simpson Wagon Road north of present day Eureka to supplant the earlier-established and longer Humboldt Route. In 1860 the Simpson Route was established as the Pony Express Trail. The 1866 Mining Act and the 1897 Reservoir Siting Act, protected miners, ranchers and others to whom access to federal lands was the basis of their livelihood. The portion of the 1866 Act codified as Revised Statute 2477 provided simply that "[t]he right-of-way for the construction of highways over public land, not reserved for public uses, is hereby granted." Although Revised Statute 2477 was repealed by the Federal Land Management and Policy Act of 1976, ***miners, ranchers, hunters and fishermen still use these early rights-of-way and rely on Revised Statute 2477 to protect their economic welfare and recreational opportunities.***

F. Water rights in Eureka County date back to the mid 1800s. Early miners, ranchers and farmers established surface water rights through the ***common law doctrine of prior appropriation***. The State of Nevada codified this doctrine for surface water in 1905 and extended the law to ground water in 1939….

G. ***Farming has been an important component of Eureka County's industry since the early days of land settlement***. Farming was limited to native sub-irrigated meadows and lands irrigated by diverted surface water until supplemental flowing wells were drilled on the Romano Ranch in 1948 and the Flynn Ranch in 1949. In 1949 two irrigation wells were drilled in Diamond Valley in an effort to develop land under Desert Land Entry. By the mid 1950s, pumped irrigation wells were being developed in southern Diamond Valley, Crescent Valley and Pine Valley. By 1965, some 200 irrigation wells had been drilled in Diamond Valley alone. Today, Eureka County's farming districts support a robust grass, alfalfa and meadow hay industry.

H. While standards of living have changed dramatically since the mid-1800s, ***miners, ranchers and farmers remain the core of the Eureka County community.*** The shift from strictly local food hunting and fishing to sport hunting and fishing and other natural resource recreation activities has added a small, but viable, recreation and tourism component to the County's natural resource-based culture. ***Custom and culture of today's Eureka County citizens remain steeped in their mining, farming and ranching heritage. Eureka County is and will ever be dependent upon natural resources for its economic existence***.

.050 Community stability

A. ***Economic and social stability of Eureka County are inseparably tied to the use of natural resources. Over ninety percent (90%) of the County's employment is in the Natural Resources and Mining sector (including agriculture). Mining presently contributes the major portion of the County's personal income and tax revenue stream; however, the "boom and bust" nature of the mine activity periodically brings farming, ranching and agricultural services back to the forefront of the economy. When mining activity lulls, the community relies on its other traditional industries to maintain its viability.***

B. State and federal lands make up eighty-one percent (81%) of Eureka County's land area. Given (1) that the community's viability remains largely dependent on business and recreational activities conducted on or in concert with state and federal lands and (2) that many of these activities are inseparably tied to the economic viability of private lands in Eureka County, ***the community remains particularly sensitive to state and federal planning decisions.***

C. Community stability in Eureka County is a ***symbiosis between the small private land base and the much larger federal land base***. Private property interests in minerals, water, forage, rights-of-way and other natural resource attributes of federal lands enhance social and economic values of Eureka County's private lands. ***Reductions in the private land base or erosion of private property interests in federal lands***, including, but not limited to real property, personal property and mixed property; split estates, easements, rights-of-way, mineral rights, water rights and customary usage rights; fee interest, tenancy and possessory interest, ***adversely affect the social and economic stability of the County***.

D. ***Certain provisions in a number of federal laws***, including the Federal Land Policy and Management Act of 1976, the Public Rangelands Improvement Act of 1978, the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), the Threatened and Endangered Species Act of 1973 and the Wild Horse and Burro Protection Act of 1971, ***have spawned***

sweeping changes to federal land policy that have proven detrimental to economic and social stability in Eureka County…. ***The threat of listing sage grouse***, other wildlife and plant species under the Threatened and Endangered Species Act ***may severely limit economic and recreational use of private, state and federal land in Eureka County, particularly where such listing occurs without adequate peer-reviewed scientific analysis.***

E. As the previous observations attest, ***stability of the Eureka County community***, its industries, commerce, schools, health care, police protection, and other services, ***rests squarely on (1) protection of private property rights, (2) sound and balanced management of natural resources, and (3) continued multiple-use and economic-use of state and federal lands.***

.060 Primary planning guidance

A. Private property and property rights. Where the Board of Eureka County Commissioners determines that it is in public interest of the citizens of Eureka County, ***Eureka County will evaluate state or federal actions related to private property and private property interests, including investment backed expectations***. The County will use as its primary guidance the Fifth Amendment to the United States Constitution, which prohibits the taking of private property for public use without just compensation. The County will also pursue the principles of Executive Order 12630 which requires federal agencies to prepare a Takings Implication Assessment prior to initiating any action, issuing any rule, or making any decision which would constitute a taking of private property or private property interest, including investment backed expectation.

B. Tax base. ***It is critical to the welfare of the citizens of Eureka County that the Board of Eureka County Commissioners pursue a stable source of tax revenue based on economic use of natural resources***. In order to build a broad tax base, the County supports privatizing certain state and federal lands for commercial, residential, industrial and agricultural and mining uses. In the face of considerable reductions in Ad Valorem tax revenues caused by transfer of private land to public ownership, Eureka County maintains a policy of no net reduction in Ad Valorem taxes related to land tenure changes unless the reductions are adequately mitigated by agreement with the Board of Eureka County Commissioners after public hearing. In addition, Eureka County promotes the concept of split-estate taxation wherein the various components of an estate in real property are taxed as a function of their relative value rather than being accrued only in the surface estate.

C. Water resources.

1. Eureka County affirms ***support for the doctrine of prior appropriation*** as established by state law; that the right to appropriate water is a compensable property right available to individuals and municipalities. ***Ownership of the right to use water has, as key principals, those provisions set forth in Nevada Revised Statutes 533.0010 through 533.085, including, but not limited to, first right, first use, beneficial use, and point of diversion***.

2. Eureka County ***promotes private development of water resources on state and federal land*** for beneficial use in Eureka County, including, but not limited to geothermal reservoirs, power generation, municipal water supplies, irrigation and stock water.

5. Eureka County will work to maintain its water resources in a condition that will render it useable by future generations for the full range of beneficial uses that further a viable and stable economic and social base for its citizens….

E. Mining. ***It is critical to the welfare of the citizens of Eureka County and the nation that mining on state and federal lands remains an open and free enterprise***. Eureka County upholds the tenet that mining claims are compensable property belonging to individuals or groups of individuals. Eureka County supports: 1. Retention of and compliance with the 1872 Mining Law as amended; 2. Mine reclamation activities as per Nevada Revised Statutes Chapter 519A; 3. Streamlining of the permitting process 4. Reasonable bonding requirements that promote small business investment in mine exploration, development, and reclamation; 5. Use of the best available science and technology to ensure adequate protection of land, air, and water resources;

F. Agriculture. Eureka County ***recognizes (1) the importance of agriculture to the stability of the local economy and (2) the historic and contemporary influence of agriculture on the community's custom and culture.*** Farms and ranches have played and continue to play a fundamental role in the social and economic well-being of our County. ***Eureka County recognizes that increasing regulatory pressures are reducing the viability of farms and ranches. In order to reverse such trends, Eureka County supports, encourages and promotes policies that will lead to the long-term economic strength of family farming and ranching.***

1. With respect to farm production, Eureka County supports:

a. private investment in and ownership of agriculturally productive land;

b. economically and scientifically sound agricultural practices;

c. ***coordination and consultation of state and federal conservation, wildlife and planning activities with local farm organizations and Eureka County.***

2. With respect to livestock production and federal lands, Eureka County supports:

a. ***private investment in and private ownership of range improvements and water developments;***

b. economically and scientifically sound grazing practices;

c. increasing grazing capacity and other economic incentives to promote private investment in range improvements including, but not limited to, fencing, seeding, water development, improved grazing systems, brush control, pinion/juniper eradication, proper fire management and noxious weed control;

d. restoring Voluntary Non-Use AUMs and suspended AUMs to active preference;

e. a grazing fee formula that accounts for all non-fee costs of producing livestock on state and federal land;

f. subleasing of grazing rights;

g. ***multiple-use concepts***;

h. ***active management of range resources by permittees rather than by public agencie***s;

i. ***limiting the role of public agencies to monitoring range condition as per the 1984 Nevada Rangeland Monitoring Handbook and determining compliance with applicable laws;***

j. coordination and consultation of state and federal conservation, wildlife, land management and planning activities with permittees, local livestock organizations and Eureka County.

G. Wildlife. ***Management of wildlife***, including fish, game animals, non-game animals, ***predatory animals***, ***sensitive species, Threatened and Endangered Species***, *under all jurisdictions whatsoever, must be grounded in peer-reviewed science and local input. Wildlife management plans must identify and plan for mitigation of negative impacts to local economies, private property interests and customary usage rights.*

1. Eureka County ***supports wildlife management that:***

a. is responsive to the County Wildlife Advisory Board, the Natural Resources Advisory Commission, and the Board of County Commissioners;

b. enhances populations of game and non-game species native to Eureka County;

c. recognizes that enhancing non-native game and non-game species may negatively impact native species and rangeland and forest ecosystems;

d. ***increases wildlife numbers where practicable and not in conflict with existing economic uses or ecosystem health***;

e. ***avoids managing wildlife at population levels that exceed those reported in historical records and established by peer-reviewed scientific investigation***;

f. recognizes that large game animals compete for forage and water with other economic uses;

g. recognizes that federal agencies are mandated to maintain or improve conditions on federal forests and ranges;

h. recognizes that wildlife damage mitigation may encumber existing interests and properties to future damages.

2. ***Eureka County will actively participate in wildlife management decisions that affect the welfare of its citizens via state wildlife planning efforts and county, state and federal land use planning. Eureka County will work to ensure proper implementation of wildlife plans***.

3. Eureka County is ***adamantly opposed to listing any species of wildlife under the Threatened and Endangered Species Act unless the highest level of scientific rigor (i.e., peer-reviewed research based on publicly accessible data sets and methodology) demonstrates that the species warrants listing. The County shall consider all reasonable actions to avoid listings under the Threatened and Endangered Species Act, including, but not limited to, state and local conservation planning and legal recourse***.

4. ***To maintain agriculture*** as a productive part of the local economy and to enhance the environment for ecologically and economically important wildlife, ***Eureka County supports sound predator control programs***.

5. Eureka County generally opposes the introduction, gradual encroachment and institutionalization of wildlife not native to Eureka County.

6. Eureka County recognizes that ***the Bureau of Land Management is mandated by Congress to manage all multiple-uses of federal lands, including wildlife, in a manner that maintains or improves the conditions of federal ranges.*** The County will pursue federal intervention in wildlife management situations in which range conditions are inadequately protected.

H. Recreation. ***Recreation is important to the citizens of Eureka County.*** The unique outdoor recreational opportunities found in Eureka County are many of its greatest assets. Eureka County values the opportunity and freedom these lands provide and encourages balanced management goals that include hiking, camping, wildlife viewing, and other outdoor recreation activities. Eureka ***County strongly advocates the rights of recreationists to continued lawful access to public lands.***

I. Utility rights and public consumption. As per 43 U.S.C., Sec. 315(e), Eureka County supports ***individual citizen's acquisition of rights-of-ways for roads, ditches, pipelines, canals, power lines, telephone lines and stock driveways. Eureka County adamantly supports the protection of vested rights that may limit other uses of state and federal lands. As per 43 U.S.C., Sec.***

315(d) Eureka County recognizes rights of local citizens to utilize natural resources for personal consumption (e.g., firewood, posts, sand, gravel, etc.).

J. Land disposition and land tenure adjustments.

1. Eureka County will ***respect and uphold private property interests*** in land, including, but not limited to, land patents, mining claims, easements, rights-of-way, and forage rights.

2. Eureka County ***maintains a no-net-loss policy with respect to private land and private property rights,*** and is opposed to public acquisition of private property, except where the acquisition is a) clearly in the public interest of the citizens of Eureka County and b) appropriately mitigated in value and in land area by transfer of property from the public domain to private ownership. Determination that such a transaction is in the public interest of the citizens of Eureka County and that proposed mitigation is appropriate shall be determined by the Board of Eureka County Commissioners after proper public hearing.

3. Eureka County recognizes that the ***imbalance of the private/public land ownership inhibits new economic activity in Eureka County and is detrimental to Eureka County's long-term viability***. The County encourages state and federal agencies to ***aggressively pursue land disposal*** to the maximum extent allowed by law. State and federal land transfers to local governments will be given priority consideration in any disposal of state or federal land.

4. ***If any public entity intends to acquire an estate in land, water, minerals, forage or any other private property in Eureka County, the proposed acquisition shall first be presented to the Board of Eureka County Commissioners. The Board shall determine likely impacts to the County's human and natural environment and render an opinion about the suitability of the acquisition***.

K. Riparian habitat and wetlands.

1. ***Riparian areas and wetlands are critically important to well-balanced and productive rangeland ecosystems***. Eureka County encourages consultation, cooperation and coordination as provided under Section 8 of the Public Rangelands Improvement Act of 1978 for riparian areas and wetlands under the jurisdiction of a federal agency.

2. The bulk of riparian areas and wetlands in Eureka County exist on private ranches and farms. ***Eureka County supports retaining riparian areas and wetlands in private ownership*** by improving the economic environment for the ranching and farming community.

L. Wilderness, wilderness study areas, parks and refuges. To the extent that multiple-use of federal lands is vital to the economy of Eureka County, the County is opposed to the designation of any Wilderness Areas or Wilderness Study Areas within its geographic boundaries. The County calls for removal of Wilderness Study Area designations and re-introduction of active stewardship of these lands that do not meet the suitability criteria of the 1964 Wilderness Act. ***Eureka County demands local input and decision-making in the designation and management of parks, refuges, Areas of Environmental Concern, roadless areas or any other legislative action, regulatory decision or policy that limits access to or use of federal land or resources within the geographic boundaries of the County.***

M. Wild horses. Eureka County recognizes that horses, protected under the Wild Free-Roaming Horse and Burro Act of 1971, are properly classified as feral animals. The County recognizes that in passing the Wild Free Roaming Horse and Burro Act, ***Congress failed to account for prior***

adjudication of the nation's public ranges, thereby disenfranchising livestock grazers and wildlife of existing forage allocations without compensation. The County recognizes that the Department of Interior is mandated by Congress to manage Wild and Free Roaming Horses in a manner that is consistent with legislative intent and will hold the agencies accountable under all applicable laws. ***Poor management of feral horse herds has resulted in sustained over-population of horses in Eureka County***. Over-population has caused long-term damage to range vegetation and water sources, and has resulted in starvation of horses during periods of drought and severe winters. Eureka County encourages federal legislation and policies that promote scientifically-sound and responsible management of feral horse herds. Eureka County advocates economically beneficial uses for feral horses and advocates public sale of excess horses. The County opposes the cost-ineffective policy of long-term pasturing for excess horses where the policy conflicts with the stated intent of the 1971 Wild Free-Roaming Horse and Burro Act to manage horses "…in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands."

N. Access. ***Eureka County supports the right of public access through state and federal lands inasmuch as access does not conflict with private property rights*** (as per the Eureka County Public Roads Resolution of March 7, 1994).

O. Pinyon and juniper control. Eureka County encourages active management of pinyon/juniper woodlands and removal of woodlands where they exist at unhealthy densities and beyond their historic range. ***Eureka County supports economic use of these resources***.

P. Wildfire. Eureka County ***supports the right for local citizens to protect their property from fires originating on state and federal lands. The County advocates active fire management on federal lands***, including, where appropriate and in consultation with grazing permit holders, adjacent landowners, local volunteer fire fighters and Eureka County, a let-burn policy. The County is ***opposed to arbitrary and inequitable restriction of post-fire land use for recreation and livestock grazing. The County insists that all post-fire land use restrictions be adequately justified and based on peer-reviewed science***.

Q. Other federal land use regulations. ***Many land use regulations have the potential to adversely impact Eureka County's economy. Eureka County mandates involvement in all federal actions that may impact the local economy according to this Title***.

Chapter 40 - COOPERATIVE PUBLIC LANDS MANAGEMENT

.010 Findings of fact

The Board of Commissioners of Eureka County, a political subdivision of the State of Nevada, finds as follows:

A. The government of the United States of America exercises ***control over 2,100,000 acres (eighty-one percent) of the land*** and the majority of natural resources within the geographic boundaries of Eureka County;

B. ***Decisions governing federal lands in Eureka County have a history of negative impact*** on the interrelated heritage of cultural, environmental and economic well-being and stability of County residents;

C. The Congress of the United States has expressed intent, codified in 42 U.S.C. §4331, to act in cooperation with County governments while using all practicable means to create and maintain

conditions on federal lands allowing for productive harmony between man and nature while fulfilling the ***social, economic, environmental and cultural requirements of present and future generations***;

D. The efforts of Congress seeking to ***coordinate federal plans with County government***, maintaining a balance between population and resources, and encouraging high standards of living and a wide sharing of life's amenities, as contemplated by 42 U.S.C. §4331(b)(5), can be enhanced by:

1. ***Increasing cooperation between Eureka County, State of Nevada, and those federal officials*** involved with the administration of federal lands situated within the County; and
2. ***Full consideration by the Federal Government of the needs of Eureka County citizens*** who will be directly or indirectly impacted by federal agency decisions regarding the use of federal lands and the management of water, fish and wildlife in Nevada;

E. There now exists a substantial and ***urgent need to increase the involvement of Eureka County in the management of federal lands*** and in the development of criteria that are meaningful in any decision-making process, as contemplated by 43 C.F.R. Section 1610.3-1(a), Section 1610.3-1(b), Section 1620.3-2(a); 36 C.F.R. Ch. II, Section 219.7(a), Section 219.7(c), Section 219.7(d).

.020 Procedures adopted

Based upon consideration of the findings set forth in section .010 of this chapter, Eureka County adopts the following procedures to ensure that there is full and complete disclosure and cooperation by federal entities to the County regarding decisions affecting federal lands located within the County and, reciprocally, that federal entities be made aware of the impact of their actions and decision-making on the interrelated heritage of cultural, environmental and economic well-being and stability of the County. The adopted procedures apply to all decisions undertaken by any agency, department or other federal entity including, but not limited to, the Department of Interior, Department of Agriculture, Environmental Protection Agency, Department of Defense, or Department of Energy (hereinafter known as "federal entities") that do or will have a direct or indirect impact on federal and private lands within the geographic confines of the County.

.030 Specific procedures

A. That the County government of ***Eureka County demands, pursuant to adopted federal statutes and regulations, full and complete notice and opportunity for involvement in the decision making processes of the federal entity*** that:

1. are being taken or are being ***proposed to be taken regarding federal lands*** located within the State of Nevada,
2. involve listing, de-listing, classification or reclassification of a threatened or endangered species or any ***designated habitat within the County***, or
3. ***involve any major federal action*** significantly affecting the quality of the human and natural environment within the County;

B. That ***failure of federal entities to afford Eureka County complete notice and opportunity for involvement beyond that afforded individuals***, or to limit State and County government involvement, input to or comment at public hearings, ***is presumed to be prejudicial*** to the government of Eureka County and its residents, and that the Board of Eureka County Commissioners is authorized and empowered by this chapter to authorize and instruct the Eureka County District Attorney to seek redress for such prejudice in the federal courts and through administrative hearings;

.040 Presumption of negative impact

If implementation of a habitat designation or other federal policy or practice over federal lands located within the geographic boundaries of this County:

A. ***causes alteration of present County land use regulations without such changes having been initiated voluntarily by the County*** and
B. ***makes it unfeasible for existing, lawful businesses to continue their current operations, then the proposed federal action will be presumed by the County to create a negative impact on the interrelated environmental, cultural and economic well-being of this County and its residents, and not to be a preferred alternative acceptable to the County as it relates to resolving the environmental and other concerns of the federal entities***.

Chapter 50 - PUBLIC ROADS

.010 Declaration of policy and intent

A. Eureka County, a political subdivision of the State of Nevada, ***holds title, as trustee for the public, to all public roads, trails, pathways, traces, highways, byways, and similar public travel corridors situated in the County,*** of every kind whatsoever, except for State and federal highways, however such roads may have come into being. Title to those roads commonly known as R.S. 2477 roads, irrevocably granted to the public by act of congress (Mining Law of 1866), is held in trust by the County as the unit of government closest to the people.

B. The County will:

1. ***Protect and defend against all interference the right of the public to travel and use the public roads within the County***;
2. ***Oppose closure of any public roads*** except as authorized by this chapter; and
3. ***Maintain the public roads by conventional or other appropriate*** means, as from time to time authorized by the Board of County Commissioners, or designate certain public roads as roads to be maintained only by passage and use without liability to the County, as permitted by Nevada Revised Statutes.

.020 Definitions as used in this section

Construction means the establishment of a road by mechanical or other means, including repeated use.

County road means any public road situated within Eureka County, except for designated State and federal highways; also, any road maintained by the County for County purposes which is not open to the public.

Highway - Modern usage: Any state or federally designated road, usually paved or graveled; or Traditional (R.S. 2477) usage: Any road, trace, trail, canal, navigable waterway, or other route used by humans for travel by wheeled vehicle, horseback, foot or boat, or otherwise. This definition applies to all highways established across public lands pursuant to the Mining Law of 1866 (R.S. 2477) between the enactment of the statute in 1866 and its repeal by the enactment of the Federal Lands Policy Management Act (FLPMA) in 1976.

Maintenance means construction, reconstruction and repair of a road by mechanical or other means, ***including repeated use***.

Public road means any road open to travel by the general public. The term includes, without limitation, roads (1) on land held in fee simple absolute by the County, (2) on easements across land held or claimed by others, (3) pursuant to express or implied permit or license on lands held or claimed by others, (4) canals or navigable waterways. ***Roads established pursuant to the grant of right-of-way by the Mining Law of 1866 (R.S. 2477 roads) are public roads***.

Right-of-way means the entire fee, easement or licensed or permitted area for a road; the traveled way, together with such adjoining land as may be required for construction or maintenance of a road.

Road means any highway (traditional usage), road, trail, trace, footpath, canal, navigable water, or other route, whether constructed or created by repeated use, when used by humans for transportation by wheeled vehicle, horseback, foot or boat, or otherwise.

.040 Interference with travel

It is a misdemeanor, punishable as provided for misdemeanors in the Nevada Revised Statutes, for any person to interfere with the right of the public to travel the public roads, except:

A. Public roads may be closed temporarily by the Board of Commissioners for reasons of public safety, and the County Sheriff and/or director of emergency management may effect temporary closures for reasons of public safety pending an emergency meeting of the Board of Commissioners to ratify such closure.
B. Public roads may be closed permanently by the Board of Commissioners only after thirty (30) days notice of intent to close and a public hearing on the proposed closure.
C. The Board of Commissioners may grant temporary exclusive licenses to use, or place lesser restrictions on the public use of, a public road to accommodate mining activity; provided, (1) an alternate route offering reasonable public access to the areas served by the public road is provided at the licensee's expense, (2) the licensee maintains the public road and returns it to

the County at the conclusion of mining activity in as good or better condition than at the time of licensing, (3) thirty (30) days' notice is given of intent to temporarily limit use of the public road for mining activity and calling a public hearing thereafter on the proposed limitation(s).
D. The Board of Commissioners may grant temporary exclusive licenses to use a public road or highway to accommodate short-term special events such as parades, races, walkathons and similar activities.

.050 Public authorized to maintain roads

The ***public is authorized to maintain, by use or by mechanical means, public roads which are not regularly maintained by the County. The public is not authorized to reconstruct or reroute a public road outside its original right-of-way***.

Inconsistency with NRS 540.011

As noted above and repeated here, NRS 540.011 recognizes "the important role of water resource planning and that such planning must be based upon identifying current and future needs for water. The Legislature determines that the purpose of … water resource planning is to assist the State, its local governments and its citizens in developing effective plans for the use of water." The DEIS alternatives will diminish our ability to develop "effective plans for the use of water" especially related to future needs many years into the future but while the mine will be operating (i.e., nearly 50 years) and is therefore inconsistent with the declaration of the Nevada Legislature in NRS 540.011.

Inconsistency with NRS 278.243 and 278.246

NRS 278.243 states that a "A…county whose governing body has adopted a master plan pursuant to NRS 278.220 may represent its own interests with respect to land and appurtenant resources that are located within the…county and are affected by policies and activities involving the use of federal land." NRS 278.246 empowers the County to "bring and maintain an action…before any federal agency, if an action or proposed action by a federal agency or instrumentality with respect to the lands, appurtenant resources or streets that are located within the…county impairs or tends to impair the traditional functions of the…county or the carrying out of the master plan."

Eureka County has adopted a master plan pursuant to NRS 278.220 and is therefore empowered to represent its own interests regarding the DEIS alternatives "involving the use of federal land."

Also, the DEIS alternatives "impairs or tends to impair the traditional functions of the…county or the carrying out of the master plan."

BLM must document in the EIS that since we have represented our own interests in the process, there has been a failure to bring the alternatives in compliance with our represented interest through honoring of the County's plans, policies, requests and proposed measures and the DEIS alternatives "impairs or tends to impair the traditional functions of the…county or the carrying

out of the master plan." However, we believe these inconsistencies can be diminished or removed altogether by BLM coordinating with Eureka County to implement our plans and policies and reach consistency as required.

Record of Decision Must Explain BLM's Decision to Override Plans and Policies

We request that after BLM coordinate with Eureka County to reach consistency with our plans and policies that there is an inclusion of discussion of remaining conflicts and inconsistencies in the Record of Decision as required and outlined in CEQ FAQ 23c: "In the Record of Decision, the decisionmaker must explain what the decision was, how it was made, and what mitigation measures are being imposed to lessen adverse environmental impacts of the proposal, among the other requirements of Section 1505.2. This provision would require the decisionmaker to ***explain any decision to override land use plans, policies or controls for the area***" (emphasis added).

Moving on, we stated in our comments on the ADEIS/ARMPA, we support the allocations agreed upon by Nevada Counties:

Table 2-1: Summary of Allocation Decisions by GRSG Habitat Management Areas[1]. (NV Counties 2023)

Resource	PHMA	GHMA	OHMA	ACEC
Land Tenure[2]	Retain	Retain / Dispose	Dispose	**Nevada Counties do NOT support the designation of ACECs as part of this planning effort.**
Solar, Wind and Renewable Energy Storage	Exclusion	Exclusion[2]	Avoidance[2]	
Major ROWs[2,3]	Avoidance	Avoidance	Open	
Minor ROWs[2,3]	Avoidance	Open	Open	
Fluid Mineral Development and Leasing	Closed	Open w/ Major Stipulations[2]	Open w/ Minor Stipulations[2]	
Nonenergy Leasables[2]	Closed	Open	Open	
Salable Minerals[2]	Closed	Open	Open	
Locatable Minerals[4]	Open	Open	Open	
Travel Management	Limited[5]	Limited[5]	Open	
Livestock Grazing	Open	Open	Open	

Notes:
1. All Allocation Decisions are subject to field verification and modification of modeled HMA.
2. Projects may qualify for a BLM waiver, exemption, or modification (WEM) and must meet the regulatory requirements of the State of Nevada, including the Conservation Credit System.
3. Projects located within designated corridors, co-located with existing infrastructure, or located in degraded habitat will be given WEM preference.
4. Projects must meet the regulatory requirements of the State of Nevada, including the State Conservation Credit System.
5. Not applicable to State, local or public roads. Travel is limited to existing roads and trails.

REQUESTED CHANGE: For each aspect of the FEIS/RMPA as it would apply in Eureka County, BLM must ensure maximal consistency with the State Plan and with County land use plans, policies, and controls. This is the minimum required to comply with FLPMA. In addition, to comply with NEPA, BLM must indicate in the FEIS/RMPA where the RMPA diverges from the State Plan and from County land use plans, policies, and controls and if the inconsistency cannot be resolved, explain why (which explanation cannot simply be that Washington headquarters policy presented in the plans is preemptive). Please also accept the County Alternative Allocations into the FEIS and ARMPA.

IV. ACECs, proposed in Alternatives 3 and 6, are not necessary, appropriate, or effective for GRSG habitat conservation.

The County categorically opposes designation of ACECs in Alternatives 3 and 6 of the DEIS/RMPA as well as in any GRSG land use plan. BLM acknowledges in the DEIS/RMPA that "[m]any states and counties have expressed concern with ACEC designation under Alternatives 3 and 6."[72] And, as the DEIS/RMPA notes, "BLM decided not to designate PHMA as ACECs in the [2015 RMPAs] because it was determined that the management actions for PHMA would be sufficient to protect GRSG habitat and, as such, ACEC designation of PHMA was not required. During the 2019 planning process, ACEC nominations were not reconsidered."[73] It is crucial that the FEIS takes into account its prior determinations and this feedback, and that BLM not select Alternative 3 or 6, which propose designation of ACECs based on erroneous modeling of habitat that includes within ACECs areas like roads and pinyon-juniper forest that are clearly not GRSG habitat.

We request the elimination of ACECs for the RMPA. Putting public lands out of multiple use through ACEC designation, especially, as here, where ACEC importance and relevance criteria are not met, is inappropriate and unjustified. The application of the mitigation hierarchy of "avoid, minimize, mitigate" for active management based on site-specific information, in lieu of ACEC designations or other land use preclusions, is the appropriate path to take in the RMPA. Avoidance (where possible) and mitigation measures provide ample opportunities for management of the primary threats to GRSG habitat without ACEC designation or otherwise restrictive allocations and land use prohibitions. BLM also must consider its limited funding available and the restraints that has on BLM's ability to actively manage areas that it puts off limits to or otherwise restricts certain uses. Further, we argue that ACECs would create a de facto delineation of "critical habitat" and prohibitions without an actual ESA listing which is arbitrary and capricious.

The County acknowledges that, under FLPMA, BLM must "give priority to the designation and protection of areas of critical environmental concern" in developing and revising land use plans."[74] BLM's ACEC manual provides that where it is considering a potential AECEC, it must "evaluate the ACEC designation in at least one plan alternative."[75] Given that BLM decided not to designate ACECs in the 2015 and 2019 RMPA processes, we question BLM's view that it is required to evaluate an ACEC in the DEIS/RMPA. In any case, it is clear that the proposed ACECs do not meet BLM's criteria for designation of an ACEC, which involves three components:

[72] *Id.* at 1-13.

[73] DEIS, Vol. III at 5-3.

[74] 43 U.S.C. § 1702(c).

[75] BLM, IM 2023-013 Clarification and Interim Guidance for Consideration of Areas of Critical Environmental Concern Designations in Resource Management Plans and Amendments (Nov. 30, 2022); *see also* BLM, ACEC Manual MS-1613.22B ("Because special management attention must be prescribed in at least one plan alternative" where BLM is considering a potential ACEC, "each potential ACEC will appear as a recommended ACEC in at least one plan alternative.").

1. The area must meet a relevance criterion. Relevance means a "significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard."[76]

2. The area must meet an importance criterion also defined in BLM regulation. Importance means that the relevant "value, resource, system, process, or hazard . . . ha[s] substantial significance and values. This generally requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern."[77]

3. The area must require special management to protect and prevent irreparable damage to relevant or important values. A need for special management means that the management actions "would not be prescribed in the absence of the [ACEC] designation."[78]

BLM's ACEC proposal is also flawed because it is inconsistent with State and County plans and policies; is neither necessary nor appropriate in light of the best available science; does not adequately assess the socioeconomic impact of ACEC designation; and because proposed designation has been conducted at the national rather than, as FLPMA requires, state and local level.

The State Plan and CCS guarantees active management through proper incorporation of the "avoid, minimize, and mitigate" hierarchy. BLM should focus on proactive management of priority habitat in Cooperation with the State and local governments in Nevada and dispense with its effort, characterized by ACECs, to impose the easiest "management" which is actually no management—instead, it is prohibition and preclusion.

A. BLM's proposed designation of ACECs makes significant errors. In areas where BLM has made errors degraded or non-habitat means that the relevance criterion cannot be met.

i. The habitat maps BLM uses to define proposed ACECs are erroneous for Eureka County: they include areas that are not habitat.

The habitat maps used to define the ACECs are based on modeling with known errors. In fact, USGS clearly states in its report where the habitat maps were released that "habitat maps provide updated, detailed, and comprehensive information about the status of habitats and can be useful to partner agencies in their efforts to designate and rank habitats for this species of high conservation concern in Nevada and California, *with full recognition that on-the-ground field data and local sources of information and expertise should be used in conjunction with inferences from these models*."[79] Yet the ACEC management in the DEIS/RMPA never acknowledges BLM's need (or desire) to make adjustments based on one-the-ground realities. While the DEIS/RMPA does include some provisions to allow potential adjustments in HMAs (though we argue that even

[76] 43 CFR § 1610.7-2(a)(1).

[77] *Id.* § 1610.7-2(a)(2).

[78] MS-1613.12.

[79] USGS, *Greater sage-grouse habitat of Nevada and northeastern California—Integrating space use, habitat selection, and survival indices to guide areas for habitat management*, at 1 (Mar. 22, 2024) (emphasis added).

these are overly bureaucratic, cumbersome, and restrictive), there is no similar process spelled out for ACECs.

As a specific example, there are large areas within the ACEC boundaries that are known not to actually be habitat or have characteristics refuting the required ACEC importance and relevance criteria. The ACECs abut and, in some cases, fully surround private lands with varying levels of development, homes, irrigated farms. ACECs surround the town of Eureka, the County Landfill, the County Shooting Range and multiple county gravel pits, and paved roads and gravel roads. Some ACEC boundaries abut the "fence line" of current mining operations. Many privately owned rangeland improvements fall within the boundaries—range fencing, water developments (with underlying vested or otherwise perfected water rights), etc. The underlying issues with the habitat maps create error propagation into the ACEC boundaries. Many pinyon-juniper (PJ) woodlands, mountain mahogany woodlands, and clearly non-habitats become subject to the most extreme and restrictive management based on lines on a map rather that realities in the field. These examples provide a perfect example of how the ACEC boundaries are arbitrary and not applicable in many circumstances. As described, just in Eureka County, we can point out many discrepancies between what is mapped as habitat versus what is on the ground that cannot be refuted as being non-GRSG habitat.

ii. Valid existing rights of way held by County are included in ACECs[80].

Additionally, ACECs are overlaid over many miles of county general and minor roads and public roads creating a case or controversy and threatens to impair valid existing rights. There are also other pre-FLPMA rights of way established by private parties within the ACECs. At a minimum, if ACECs are to move forward, all prior, valid existing rights must be cut out of the ACEC boundaries.

The RMPA ACEC provisions fail to outline procedures to address valid existing rights that have not been adjudicated in federal court but are nonetheless valid existing rights (e.g., RS 2477 roads). This leaves in limbo water rights, water movement (conveyance) rights-of-way (RS 2339 and RS 2340), and travel rights-of-way (RS 2477) as recognized valid existing rights. RS 2477 and RS 2339 rights are overlooked and not even acknowledged. We are certain that conflicts will arise on these roads and other rights-of-way with ACECs (and also under the RMPA without ACECs) because BLM has already tried to impose restrictions on these without the current RMPA and ACECs.

BLM has already asserted authority and required project proponents to apply for FLPMA rights-of-way on existing County roads that fall under RS 2477. Eureka County has been adverse to BLM's proposal for us to apply for a ROW on existing county roads that have existed and have been actively maintained for decades before FLPMA. Mines and other project proponents are being forced to take upon themselves seasonal travel restrictions, including them as Applicant Committed Environmental Protection Measures. We sat in a meeting with BLM and a mining proponent where BLM was asked what would be done if the mining company did not agree to seasonal travel restrictions. The BLM project lead responded that they would force the issue via

[80] These rights of way also exist in all HMA designations and similar types of effects exist in these areas in addition to the ACECs.

43 C.F.R. § 3809 as "unnecessary or undue degradation." The ACECs will exacerbate this egregious refusal to acknowledge and not impair valid existing rights.

B. BLM would have benefitted, and would have relied on the best available information, if it had worked with local governments to evaluate habitat conditions and had ground-truthed its evaluation.

The Draft RMPA/EIS states: "The evaluation for relevance and importance criteria was conducted in a two-step approach that started with rangewide scientific data and models, *followed by a review by staff at the state and field office levels who are more familiar with the local habitat conditions.*"[81] Nobody is more familiar with the local habitat conditions than locals, including staff at the Eureka County Department of Natural Resources (ECDNR). Nonetheless, neither Eureka County local experts—including the ECDNR, the Eureka Conservation District, and the Eureka County Advisory Board to Manage Wildlife—nor any local landowners and land users were invited to be involved in this process whatsoever. Coordination of local knowledge and expertise would have helped inform BLM's process to either justify not moving some or all of the ACECs forward or adjusting their boundaries based on real, on-the-ground relevance and importance information.

BLM also discloses that "[a] series of rangewide spatial layers . . . were visually reviewed across the entire GRSG range . . . as an initial screening for consideration by BLM State and Field Office staff to determine if they should be carried forward to discussions with partners."[82] Visual review is subject to extreme viewer bias and subjectivity. Modeling done with peer review and according to scientific standards includes an error assessment to help the analyst determine how uncertain a modeling product is; visual review includes no such safeguard. The County is thus forced to conclude that the process of ACEC delineation was no more than a subjective "wish list" of assembled by the visual reviewer.[83] It is biased and inadequate.

C. The proposed ACECs do not meet the relevance, importance, and special management criteria.

i. BLM cannot meet the relevance criterion for areas that are not habitat.

The major inaccuracies in BLM's delineation of areas proposed as ACECs means that the ACEC relevance criterion is not met for significant portions of areas proposed for designation as ACEC. BLM states that an area satisfies the relevance criterion through "[t]he presence of GRSG."[84] This

[81] DEIS, Vol. III at 5-4.

[82] *Id.* at 5-5.

[83] We note, in the same vein, that for many of the ACECs, the Nevada Department of Wildlife's recommendation was simply "[r]ecommend for inclusion in draft EIS as a potential ACEC." *Id.* at 5-22. The recommendation from NDOW does not provide any justification for designation of an area as ACEC because of more than local importance or need for special management beyond that already required (which includes the requirements of the State Plan and CCS).

[84] DEIS at 2-117.

appears to be BLM's only relevance justification for its ACECs. It is elementary that GRSG are not present where an area does not possess the basic characteristics of GRSG habitat, i.e. sagebrush or sagebrush/grasslands.[85] Where GRSG habitat does not exist—as is the case within some of the ACECs BLM has designated—BLM does not meet the basic relevance threshold and ACEC designation is impossible.

ii. PHMA characteristics cannot by themselves establish that an ACEC is appropriate; to establish importance, BLM must prove more.

Explaining its designation of ACECs in Nevada, BLM uses characteristics of PHMA as a reason to designate ACECs. But not all PHMA is ACEC: standing alone, these characteristics are not enough to designate an ACEC. PHMA is defined as an area that has "the highest value to maintaining sustainable GRSG populations and can include breeding, late brood-rearing, winter concentration areas, and migration or connectivity corridors." Thus, prime GRSG habitat with high value to GRSG population, including leks, late brood-rearing areas, winter concentration areas, and migration and connectivity corridors are not factors that show importance. This means that population density and lek and habitat persistence, two of BLM's evaluation criteria for ACEC importance, do not prove importance.

Additionally, BLM's analysis of areas for ACEC designation identified certain "most influential considerations in identifying areas for further consideration."[86] For Nevada, these considerations are "high relative abundance" and "high connectivity within the PHMA areas."[87] But those two factors are already built into USGS's habitat modeling and hence the HMA categorization. BLM's choice to assess high relative abundance of GRSG and high connectivity with PHMA areas again as ACEC priorities—on top of the HMA designation that already built in these considerations—is "double counting" and puts subjective and biased weight on layers already considered in HMA mapping.

If BLM disagrees with these conclusions, it must clearly explain in the FEIS/RMPA, using best available science, why PHMA characteristics support designation of ACECs for some PHMA and not other PHMA.

iii. ACECs in or adjacent to Eureka County do not meet the importance criterion.

[85] The Supreme Court recently rejected an agency's designation of habitat where the species for which the habitat was designated was not present and where the area was such that it could not presently constitute habitat for the species. The Court held, regarding designation of critical habitat under the Endangered Species Act, that the Secretary of the Interior is not authorized "to designate the area as critical habitat unless it is also habitat for the species." *Weyerhaeuser Co. v. United States Fish & Wildlife Serv.*, 586 U.S. 9, 20 (2018). The same basic conclusion should hold here: BLM cannot designate HMA if GRSG is not present, and it certainly cannot find relevance for ACEC designation where no habitat actually exists.

[86] DEIS, Vol. III at 5-6.

[87] *Id.* at 5-7.

For the ACECs within or adjacent to and affecting Eureka County, primarily ACECs 9, 10, and 11, Eureka North and South, Grass-Kobeh Valley, and Monitor Valley, respectively, the DEIS/RMPA does not prove importance.

BLM describes these ACECs in terms of genetic connectivity, percentage of PHMA+ (which is not a management category BLM uses), and distance to "genetic nodes" to try to ascribe importance.[88]

None of these data support importance.

First, as we have noted, simple presence of a GRSG population center does not indicate ACEC importance because this is a basic characteristic of PHMA which for at least some PHMA BLM has determined is not important to be and ACEC.

Second, as explained above, habitat connectivity was already taken into account as part of BLM's assessment of HMAs. It should not be the basis for ACEC designation. Additionally, though the County recognizes that genetic connectivity and habitat connectivity are of concern in species conservation, treating these characteristics as important does not find support in BLM regulation, caselaw, or BLM guidance. True, BLM Instruction Memorandum 2023-013 states that as BLM assesses relevance and importance, it should consider "whether relevant values contribute to landscape intactness, climate resiliency, habitat connectivity, or opportunities for conservation or restoration." But this overbroad IM cannot be used as a rule of general applicability (in violation of the APA), does not state that connectivity is important, and does not mention genetic connectivity. This vague directive significantly expands the regulatory criteria for meeting importance and has the improper result of making the vast majority of BLM-managed land in Nevada eligible for ACEC designation, contrary to FLPMA's multiple use/sustained yield mandate.

Third, and in the same vein, we do not see how the presence of high elevation brooding habitat, which are common throughout GRSG range, contribute to "more than local significance." While the proposed ACECs may include high value habitat and should be managed to protect GRSG from primary threats, the sheer volume of proposed ACECs in Nevada (more than 5 million acres) clearly indicates that these areas are not rare or especially unique.[89]

Fourth, we see no reason that distance to genetic nodes is relevant to ACEC designation. It may be that we misunderstand BLM's meaning; if so, BLM should clarify this unclear statement. In any case, a genetic node does not indicate importance. The key paper mapping GRSG hub and keystone nodes states: "Hub and keystone nodes were found across the entire species' contiguous range." "[N]odes with elevated importance to network-wide connectivity were found more central[ly]: especially in northeastern, central, and southwestern Wyoming and eastern

[88] *Id.*

[89] We note additionally that in Wyoming, which has the most GRSG habitat of any state, BLM proposes to designate only 839,000 acres of ACECs. The DEIS gives no explanation for this extreme discrepancy, which points to an unscientific unevenness in the BLM's application of its own ACEC criteria.

Idaho"— but not in Nevada.[90] In fact, the paper's designation of modes with the most "centrality" does not include any ACECs in Eureka County.[91]

Finally, the fact that ACECs are noted to be bisected by various utility corridors and major state and federal highways militates *against* designating the ACEC rather than for designation. The RMPA aims to protect against future habitat fragmentation rather than against fragmentation that has already occurred or is a foregone conclusion that the ACEC deliberately does not protect against (i.e., Eureka North and South ACEC is split into a northern and a southern area to avoid overlap with the utility corridor).

No ACEC should be designated in Eureka County: ACECs they do not meet BLM's importance criterion.

iv. BLM does not explain why its proposed ACECs require special management, that is, actions that would not be prescribed without ACEC designation. Instead, most of the actions contemplated by ACEC designation could be or are prescribed in the DEIS without ACEC designation.

In addition to meeting relevance and importance criteria, BLM must also demonstrate that a proposed ACEC requires "special management attention" not available under standard RMP land use designations and necessary to protect and prevent irreparable damage to the relevant and important resources.[92] That is, special management attention is decided in context of the relative and important resource (it must be necessary to protect that resource) and the standard land use designation (it must go beyond standard management actions not associated with ACECs). BLM's attempts to prove that special management is required and goes beyond management actions not associated with ACECs are unconvincing.

In 2015, as noted, BLM determined that "management actions for PHMA would be sufficient to protect GRSG habitat and, as such, ACEC designation of PHMA was not required." Thus, it is particularly important that BLM explain how nine intervening years have modified its determination. Instead, BLM offers no analysis how (1) special management actions are required to "protect and prevent irreparable damage to" GRSG in light of monitoring and evaluation data, and (2) why PHMA/GHMA management actions are not sufficient to protect GRSG. What is provided is a tortuous analysis that means nothing and provides nothing to actually benefit GRSG any more than the other allocations and management actions without ACEC designation.

BLM first explains that "[i]n general, management actions that protect resources (such as surface-disturbance restrictions and management for desired habitats) would help maintain and improve the relevant and important values within ACECs."[93] It adds that "[i]dentifying ACECs as ROW

[90] Todd B. Cross et al., *The genetic network of greater sage-grouse: Range-wide identification of keystone hubs of connectivity*, 8 Ecol Evol. 5,394, 5,394 (2018).

[91] *See id.* at Figs. 3, 6.

[92] MS-1613.02 ("ACEC designations highlight areas where special management attention is needed to protect, and prevent irreparable damage to, important historic, cultural, and scenic values, fish, or wildlife resources or other natural systems or processes; or to protect human life and safety from natural hazards.").

[93] DEIS at 4-119.

exclusion or avoidance areas would protect relevant and important values by reducing (for avoidance areas) or eliminating (for exclusion areas) impacts from development requiring a ROW permit. Such developments include utilities, access roads, and renewable energy projects."[94] But such management actions do not require ACEC designation: for example, independent of ACEC designation, Alternative 3 provides for no surface occupancy of all Wyoming PHMA.[95]

Perhaps trying to salvage ACEC designations that, overall, make little sense, BLM notes that while:

> PHMA, IHMA, and GHMA allocations provide a comprehensive management framework, covering a diverse array of management actions and restrictions in Alternatives 1–6, effectively capturing GRSG habitat and most ACECs . . . ACEC designation adds a layer of specificity, enabling a more targeted approach to address unique relevant and important values that might not be fully covered by the broader allocations. ACEC designation emphasizes and prioritizes specific concerns within designated areas, offering a mechanism to address nuances that may not be sufficiently addressed by the overarching PHMA/IHMA framework.[96]

BLM does not explain how a "mechanism to address nuances" equates to a management action that would not occur absent designation of ACECs. The obvious answer is that the two are not synonymous.

Ultimately, the DEIS provides no explanation why (1) special management actions are required to "protect and prevent irreparable damage to" GRSG in light of monitoring and evaluation data, and 2) why PHMA management actions are not sufficient to protect GRSG. In the case of one land use that the Alternative 3 ACECs would exclude—renewable energy—the County strongly agrees that this activity should be excluded from GRSG habitat. It is not, however, necessary to create an ACEC to make this exclusion: the exclusion should simply be made in Alternative 5, as part of BLM's stipulations regarding permitted activities in PHMA. Further, the proposed County Alternative Allocations address the issue related to renewable energy and fluid minerals without ACEC designation.

The fact that the DEIS/RMPA provides no special management justification for ACEC designation should, alone, render ACEC designation in Alternatives 3 and 6 untenable. In the FEIS/RMPA, BLM should clearly document what (if anything) has changed between 2015 and now that would make "special management" necessary to protect GRSG resources. On the justification it gives in the DEIS/RMPA, designation of ACECs is not warranted.

v. BLM must, but did not, consider past and current human influence on areas proposed for designation as ACECs as part of its special management analysis.

[94] *Id.*

[95] *Id.* at ES-7.

[96] *Id.* at 4-120.

Of the layers that BLM reviewed to determine ACEC boundaries,[97] BLM did not include a single layer that related to human existence and influence. If ACECs cannot be designated absent special management actions that "protect and prevent irreparable damage" from human influence, an understanding of the baseline condition of human influence must be the foundation on which all analysis is founded. Without this consideration, the currently proposed ACEC boundaries in many areas encompass areas considered the lowest landscape intactness by the USGS model that was completed with BLM. Ecological Site Descriptions (ESD) and the current ecological state of areas as well as restoration pathways are also absent from the layers analyzed. These metrics are outlined in the State and Transition Model (STM)/Disturbance Response Group (DRG): they are published and available for use by BLM.

The "special management" required for ACECs has to be grounded in the best available rangeland science to know what must be done to "prevent irreparable damage"—all grounded in ESDs and their STMs. To not consider the on-the-ground ecology of sites within proposed ACECs is a fatal flaw to all analyses and management prescriptions put forward for ACECs.

D. RMPA[98] and ACECs disincentivize and undermine cooperative conservation.

The RMPA and ACECs components will undermine Eureka County's and county landowner and citizen efforts to conserve GRSG in Eureka County and consequently harm the environment and GRSG. Eureka County (and the State of Nevada through the Sagebrush Ecosystem Program) stepped up when challenged to do so by prior Interior secretaries and Nevada governors to do what was necessary to stave off undue and restrictive or preclusionary "hands off" land use provisions and avoid a GRSG ESA listing. We have been successful in conserving and enhancing GRSG without the added burden of the RMPA and ACECs. Thus, we are deeply concerned that BLM and other state and federal agencies have discarded the conservation work and partnerships accomplished at the local level instead focusing on development of a typical government top-down approach for another planning process. Approaching GRSG conservation from a top-heavy, top-down approach undermines these local efforts and does little to build a spirit of partnership with those local entities necessary if any planning effort is going to be successful in implementation of real conservation.

We have done substantial habitat work within the ACEC boundaries and HMA areas and have created and expanded habitat as can be readily seen from the habitat maps and ACEC boundaries. This work was completed in cooperation with landowners and land users, including private landowners, ranchers with grazing permits, mining companies, recreationists and sportsman, etc. These efforts all to improve conditions for GRSG to preclude more onerous and restrictive management being imposed. It is a slap in the face, a bait and switch, for BLM to consider imposing one of the most restrictive land designations and management schemes completely antithetical to the incentives to "do the right thing" that brought folks together. The RMPA and ACECs would punish those whose management is creating the conditions to be important habitat and ACECs.

[97] These are listed at DEIS, Vol. III at 5-5–5-6.

[98] While Eureka County comments on the issue of undermining cooperative conservation in this section on ACECs, it applies to many provisions of management decisions and allocations for HMAs, regardless of ACEC designation.

We have created an incentive for landowners, ranchers with BLM grazing permits, mining companies, and other agencies to work with us to implement these projects in the course of our land use planning and natural resources conservation. This incentive vanishes as a result of the RMPA and ACECs, which will discourage these same partners from coming to the table to work on real on-the-ground projects because of the restrictive provisions.

Eureka County has built relationships and gained approvals from private landowners and acquired funding, including grants, to hire hand-crews to reduce the density of and selectively remove pinyon-juniper trees encroaching into GRSG habitat from over 4,487 acres of private land and 1,813 acres of public land in GRSG habitat on Roberts Mountain, the Diamond Range, the Monitor Range, and the Sulphur Springs Range mostly in or adjacent to the ACEC boundaries. This proactive work, all completed since 2013, was at a direct cost of $649,825 (not including any in-kind costs) and we have additional funds committed for continued habitat projects. The RMPA and ACECs will interfere with these types of conservation projects, making private landowners less able and willing to cooperatively work on conservation efforts, which will frustrate the goal of conserving and enhancing GRSG habitat.

Eureka County, through the Eureka Conservation District (ECD), the Eureka County Department of Natural Resources (ECDNR), and the Eureka County Advisory Board to Manage Wildlife (ECABMW) have taken the lead on other projects to rehabilitate and restore agricultural lands in and adjacent to GRSG habitat that includes incorporating soil amendments and grass and forb species in fallow land seedings that GRSG utilize for food and cover and funding construction of wildlife escape ramps and distributing dozens of these ramps for use in water troughs in GRSG habitat.

Because invasive weeds increase wildfire risks are a principal threat to GRSG habitat, the ECDNR and ECD have implemented substantial noxious and invasive weed treatments throughout the County through our Weed District. On average, we treat over 1,000 acres of noxious and invasive weeds per year at a cost of $60,000 to $100,000 per year. The majority of weed infestations we treat are adjacent to roads and the opportune treatment window is in the spring when the weeds are actively growing. Potential travel restrictions and clouded title on county roads will limit our ability to efficiently access all areas we need to for weed control. Further, the weed district funds are generated through a tax on private lands within the district. District funds have been spent on weed control on BLM managed lands. The incentive to utilize district funds for any weed treatments off of private lands is undermined by the RMPA and ACEC restrictions. ECABMW has also constructed, maintained, and repaired wildlife water guzzlers that benefit GRSG and other wildlife species. Eureka County's strong commitment to wildlife is reflected on every agenda for the ECABMW, which includes a standing item related to pursuing wildlife habitat enhancement projects. Even without the RMPA, we have had difficulties getting wildlife water developments and habitat projects approved on BLM managed land and the additional red-tape added through the RMPA and ACECs will further impact our ability and will to pursue and implement these projects.

Additionally, since 2010, ECDNR has applied for and received three separate Clean Water Act 319(h) subgrants through the Nevada Division of Environmental Protection that have had direct

benefit to GRSG. These subgrants provided 50% of the total project costs. One subgrant worked with a rancher at a cost of $130,381.54 to construct a riparian grazing pasture to reduce livestock use, hired range riders to move livestock off riparian areas, and implemented monitoring for adaptive management. The second subgrant worked with a rancher at a cost of $61,961.00 to develop an off-stream water development to draw livestock from riparian areas and implemented monitoring for adaptive management. The third subgrant at a cost of $60,000 developed an off-stream water development to draw livestock from riparian areas, which have been recognized as an important but limited habitat for GRSG. All of these projects were completed within the ACEC boundaries.

These examples above are just a sampling of the efforts Eureka County has undertaken, working with landowners within and adjacent to ACECs, and public lands users to benefit GRSG and conserve its habitat. These coordinated efforts rely upon the continued use of public lands in combination with private lands and the RMPA and ACECs will interfere with what have proven to be effective conservation strategies. The RMPA and ACECs will also create bureaucratic delays and additional red-tape that will further hamper efforts on-the-ground. Rather than promoting and facilitating conservation work and partnerships at the local level with a proven track record of success, the RMPA and ACECs represents a cumbersome, top-down approach that will not effectively or efficiently achieve conservation.

E. The proposed ACEC designation is inconsistent with County and State policies and programs.

i. The proposed designation is inconsistent with Eureka County's plans and policies.

The explicit language of Section 202(c)(9) of FLPMA provides that the local knowledge and concerns of counties be adequately considered in the land use planning process, ostensibly to ensure that the federal government does not encroach on local needs.

Eureka County in particular demonstrated during the Nevada litigation challenging the 2015 RMPA that not only would BLM's restrictions directly interfere with key county planning measures, but they interfere also with Eureka County's own Master Plan[99] and Title 9 of the Eureka County Code,[100] both of which promote GRSG habitat conservation. The current DEIS/RMPA and ACEC provisions are even more inconsistent than the 2015 RMPA with key elements of County Code Title 9, including Chapter 30, the framework for land-use planning on federal lands; Chapter 40, procedures to ensure that there is full disclosure and cooperation regarding decisions affecting federal lands located within the County; and Chapter 50, which

[99] As Eureka County explained during the 2015 RMPA litigation in the Nevada Court, in 2006 it updated the Land Use Element of the Eureka County Master Plan with substantive provisions for wildlife and wildlife habitat, which include sage grouse. This plan was again updated in 2010 to become the Natural Resources and Federal or State Land Use Element of the Master Plan ("Eureka Master Plan"). The Eureka Master Plan was adopted pursuant to and in compliance with Nevada Revised Statutes Chapter 278.

[100] Title 9 of the Eureka County Code provides for conservation of natural resources and wildlife, including the GRSG.

declares that the County holds title in trust for the public to all public roads and public travel corridors in the County except for State and federal highways.

Eureka County previously submitted detailed comments and again in this comment letter regarding the need for consistency with these County policies and codes, and explaining that the County plans better provide for GRSG habitat conservation and enhancement while maintaining a strong economic base. We incorporate those here. The BLM must consider the data and efforts available to it through Eureka County's plans and policies, address the blatant inconsistencies, and strive for better coordination with local governments given the Nevada district court's recognition of Nevada's unique interests in the sage grouse planning process.[101]

ii. RMPA[102] and ACECs undermine the State Plan and Conservation Credit System.

In addition to being inconsistent with Eureka County's plans, policies, and programs and interfering and undermining proactive, incentive-based conservation actions, the RMPA and ACECs is also inconsistent with the Nevada State Plan and similarly interferes with and undermines the work, substantial funding, and active conservation projects done through the Nevada Sagebrush Ecosystem Program including the SEC and the SETT.

The immediate past Eureka County Commission Chairman, Dr. Goicoechea, served for many years on the SEC as the local government representative in developing the Nevada Sage-grouse Conservation Plan (including the CCS). The current Eureka County Natural Resources Manager, Mr. Tibbitts, was appointed by the Governor to replace Dr. Goicoechea on the SEC as the local government representative. Eureka County is thus uniquely qualified to comment on the inconsistencies and conflicts between BLM's RMPA and ACECs and the State Plan through the lens of local government representation.

The RMPA and ACECs conflicts with a basic premise of the Nevada Plan which does not prohibit or exclude land uses in GRSG habitat areas but requires that impacts be avoided if possible, minimized to the maximum extent possible, and mitigated if impacts cannot be avoided. This premise recognizes that multiple use and sustained yield of the land is essential to the State's economy and social stability and at the same time fully compatible with habitat conservation. The State Plan protects GRSG populations, conserves their habitat, and focuses on reducing the primary threats to GRSG habitat—wildfire and invasive grass species. In contrast, the RMPA and ACECs focuses on restricting and prohibiting land uses, including land uses not identified as primary threats to GRSG, which is completely inconsistent with the Nevada Plan.

[101] *See W. Expl., LLC*, 250 F.Supp.3d at 731.

[102] While Eureka County comments on the issue of undermining the State Plan and CCS in this section on ACECs, it applies to many provisions of management decisions and allocations for HMAs, regardless of ACEC designation, as we outlined here and above.

F. ACECs are neither necessary nor appropriate tools; indeed, they may prevent habitat conservation by increasing wildfire threat.

As we have commented at length in cooperating agency comments and in these comments, the primary cause—by orders of magnitude—of loss of GRSG habitat is wildfire and subsequent growth of invasive vegetation. BLM's own analysis shows that 87% of habitat loss in the Great Basin is due to wildfire. By contrast, loss of PHMA to anthropogenic surface disturbing activities totals less than 1.28%. Effective GRSG conservation must concentrate on preventing large scale ecosystem disfunction issues (wildfire, invasive vegetation) and building and sustaining the partnerships necessary to address these threats across ownership boundaries and jurisdictions. ACECs do none of these things—fire and invasive vegetation do not stop for an ACEC boundary. For this reason, the proposed designation of ACECs in Alternatives 3 and 6 do not meet BLM's purpose and need: to "address the continued GRSG habitat losses that are contributing to declines in GRSG populations."[103]

In fact, designation of ACECs may exacerbate the primary causes of GRSG habitat loss because ACECs have frequently been used as false pretexts for elimination of activities, like managed grazing, which have important benefits for managing fine fuels and controlling wildfire.[104] For this reason, ACECs should only be designated where they are required to ensure conservation outcomes. Given the primary causes of GRSG habitat loss (wildfire and invasive vegetation) ACECs are neither necessary nor appropriate conservation tools in this instance.

G. The socioeconomic impact analysis of ACECs is inadequate.

The DEIS/RMPA does not adequately analyze the extent to which ACECs would economically and socially harm rural counties, like the County, that depend on mineral exploration and development. Below, we further address BLM's inadequate discussion of socioeconomic impact resulting from the RMPA as a whole, and we incorporate into this discussion of BLM's ACEC analysis that more general discussion.

A recent state report found that mining, quarrying, and oil and gas extraction accounted for the overwhelming majority of employment in Eureka County.[105] Tens of thousands of active mining claims have been staked on federal land within the County's boundaries. Based on data available from the Nevada Division of Minerals, there are 9,971 mining claims in just the Eureka County portions of the ACECs with nearly 33,000 claims in the ACECs as a whole. The restriction of mining in ACECs under Alternative 3 and the requirement, under Alternative 6, of a plan of operations for any mining activity beyond casual use would be a major financial burden on many small mining companies and would likely preclude exploration and development with downstream economic losses to Eureka County's economy. There would also be impacts to mining claim fees paid to both counties and the state (and BLM) to maintain and perpetuate mining claims. Fees that go towards administering overall minerals programs. BLM does not present an unbiased

[103] DEIS at 1-5.

[104] One example is designation of Research Natural Areas (RNAs) in Oregon under the 2015 RMPA; under that plan, portions of 13 RNAs were unavailable for grazing. *Id.* at 2-105.

[105] Lightcast, Eureka County Nevada Economy Overview, at 2, 17 (2024) https://goed.nv.gov/wp-content/uploads/2024/04/Eureka.pdf.

environmental effects analysis of ACECs which includes estimates of potential socioeconomic effects to mining exploration companies, on small rural businesses supporting mining exploration, on the County, on the local job market, and on special districts that are supported by the claim fees, and Net Proceeds of Minerals tax.

First, BLM discusses likely impacts from proposed management actions at a high level of abstraction.[106] For example, BLM states: "Management of ACECs would impose greater restrictions on mineral development in some areas, which may increase costs or push development to other lands."[107] Or: "Requiring a plan of operations in ACECs would increase administrative process and cost for operators conducting exploration. This could result in a reduction in exploration in ACECs, compared with Alternative 1, which could lead to a reduction in development and production in these areas as well. If this results in a reduction development, there could be impacts on economic and social conditions in the surrounding communities."[108]

This vague and confusing summary is inadequate and incomplete. The mineral exploration industry, as well as active mines, is a major economic contributor to Eureka County. A University of Nevada study notes that "exploration activity is primarily focused in rural areas and can have a substantial impact on the local economies."[109] According to this study, $309,103,098 was spent on exploration in Nevada in 2021 and a minimum of $350,041,568 was spent on exploration in 2022. "Employment showed similar year-over-year improvements with a minimum of 524 employees in 2021 growing to a minimum of 619 in 2022, a 15% annual increase."[110] These figures do not account for the indirect and induced economic contributions that add even more economic contibutions. The cost of claim fees/leases, uncertainty surrounding mining laws and regulations, and the time and/or cost of permitting were viewed as factors with negative impacts. None of this information was contemplated in the DEIS/RMPA. Neither were the social aspect of **socio**economics adequately included.

Second, the DEIS/RMPA fails to give a sufficiently detailed account of how such projected losses would curtail County and other services, such as law enforcement, medical services, school services, emergency services, fire services, and other local services that depend on sustained discovery and growth in the mining industry. Nor does it offer more than glancing consideration of how deterioration of such services would transform our communities, or affect underserved populations (environmental justice considerations) and social stability. The DEIS/RMPA additionally fails to consider how the "hard" disturbance cap on ACECs could impact the development of infrastructure on ACECs necessary for the protection of human life and safety. Nevada counties requested in our cooperating agency comments that these effects be considered and that BLM include an exception where public health and safety (not just in a catastrophe or emergency) is at issue.

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[106] *See* DEIS at 4-179.

[107] DEIS, Vol. III at 10-31.

[108] *Id.* at 10-34–10-35.

[109] Travis Fisher, *Nevada mineral and energy resource exploration survey 2021/2022—Nevada Bureau of Mines and Geology Exploration Survey ES-2022*, at 3 (2022).

[110] *Id.*

H. BLM improperly conducted ACEC designation and publication at the national rather than state level.

BLM regulations provide that "[*t*]*he State Director*, upon approval of a draft resource management plan, plan revision, or plan amendment involving ACECs, shall publish a notice in the Federal Register listing each ACEC proposed and specifying the resource use limitations, if any, which would occur if it were formally designated.[111] BLM takes other parts of this ACEC regulation seriously: for example, it set a 60-day comment period for the ACEC section of the 2024 DEIS/RMPA to comport with the regulation.[112] But state-specific ACEC designations were not published in the Federal Register by directors for the ten states involved in the 2024 DEIS/RMPA.

That BLM regulations locate responsibility for ACEC publication is located with the State Director again demonstrates, consistent with our comment above, that BLM's planning regulations require land use plans to be developed at the field office level with the oversight and approval of state directors. ACECs should only be proposed, evaluated, and designated at the state office level with local input and coordination.

REQUESTED CHANGE: BLM should not designate ACECs as part of its 2024 GRSG planning effort. Its consideration of ACECs in the FEIS/RMPA must explain differences between the 2015 RMPAs, which decided that designation of ACECs was unnecessary, and the current situation. BLM must present a thorough, unbiased environmental effects analysis of both ACEC alternatives, which must include all potential socioeconomic effects to mining companies and Eureka County and its citizens. Finally, ACECs should only be evaluated considered at the field office or state level, consistent with BLM regulation.

V. BLM's socioeconomic analysis is entirely inadequate, contravening NEPA.

NEPA requires that an EIS's environmental consequences analysis address, "[w]here applicable, economic and technical considerations."[113] "[W]hen the agency determines that economic or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss and give appropriate consideration to these effects on the human

[111] 43 CFR § 1610.7-2(b) (emphasis added).

[112] BLM explained that "NEPA regulations [at 43 CFR § 1610.7-2(b)] require [that] we consider all substantive comments . . . provided during the comment period. And so, while there is a 60-day comment period for ACECs as identified in BLM[']s regulations [if] substantive . . . comments related to ACECs [are] provided after that, but within the planning[—]within the overarching comment period, we will need to consider those as well." BLM, Transcript of Virtual Public Meeting for the Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement, at 01:12:34–01:12:45 (Apr. 9, 2024) https://eplanning.blm.gov/public_projects/2016719/200502020/20109295/251009289/2024_GRSG-DEIS%20Virtual%20Public%20Mtg1-04-09-2024_Transcript_508.pdf. We are grateful for the opportunity to provide comments on the ACECs as part of the 2024 GRSG DEIS/RMPA, and think this assessment of the DEIS/RMPA in its entirety makes sense.

[113] 40 C.F.R. § 1502.16(a)(10).

environment."[114] Here, BLM acknowledges that its RMPA will have economic impact.[115] But its discussion of social and economic conditions—seven pages in the main body of the DEIS and an approximately 90-page appendix—ranges across ten states and provides very little granular detail that is useful at the local level. BLM does not quantify the social or economic effects of the proposed actions on industries including ranching and mining, does not provide detailed information on economic and fiscal impacts to counties, and does not rely upon the best available information.

The Draft RMPA/EIS fails to provide an adequate inventory and analysis of lost current and future uses and the impacts of such restrictions from socioeconomics to climate change to national security and supply chain issues and the impact to Eureka County's proprietary interests including the environmental health of its land interests must be thoroughly analyzed and provided. The socioeconomic language in the Draft RMPA/EIS is woefully inadequate and mostly worthless and unusable for Eureka County to weigh the socioeconomic impacts of the RMPA and ACECs. This is especially egregious and cavalier given Eureka County's specific scoping comment requesting adequate and useful socioeconomic impact analyses that was missing in the 2015 RMPA EIS. The lack of socioeconomic analysis for Eureka County jeopardizes all RMPA decisions in the future. The HMA and ACEC designations will have severe impacts on our economy and social stability. As we also noted in our scoping comments, more information is now readily available for BLM to conduct adequate socioeconomic analysis. BLM must arrange for economic data and information to be collected or assembled if already available.[116] For example, BLM's effort with the University of Nevada, Reno (UNR) College of Agriculture, Biotechnology and Natural Resources, UNR College of Business, UNR Cooperative Extension, the US Forest Service and counties to complete a socioeconomic baseline data collection for all counties in Nevada through the Nevada Economic Assessment Project (NEAP) has resulted in volumes of useful data and information. Eureka County expects and requests BLM to utilize NEAP data with other available Eureka County data and information to complete a thorough and robust socioeconomic analysis.

A. BLM does not accurately or adequately address impacts to industries including ranching and mining, and hence to counties that rely on these industries, and the HMA designation in Alternatives 3–6 is inconsistent with the County's land use plans, policies, and controls.

i. Ranching

Our analysis shows that the Alternative 3 management actions will result in closure of the majority of BLM-managed lands in the County to livestock grazing, and subsequent loss of the majority of ranching businesses. The DEIS/RMPMA provides an inaccurate or inadequately explained analysis of the impact its proposals augur for ranching.

[114] *Id.* § 1502.16(b).

[115] *See*, *e.g.*, DEIS at ES-7 ("The nature and types of social and economic impacts associated with management actions under the alternatives would be similar across GRSG range.").

[116] *See* 43 C.F.R. § 1610.4-3.

The facts on which BLM relies are either inaccurate or inadequately explained. BLM states that "[o]n annual average, livestock grazing on allotments where PHMA accounted for at least 15 percent of the acreage in the Nevada analysis area is expected to support about 236 total jobs (about 82 direct jobs in the animal production and ranching sectors)."[117] The County is unsure how BLM came to this number. The 2017 Census of Agriculture reports 110 farms in Eureka County alone, and approximately 92% of land in these farms is pastureland.[118] It counted 19,983 head of cattle in the County.[119] BLM's own data shows dozens of allotments that nearly blanket the County, overlapping with HMA and proposed ACEC designation.[120] Ranchers in Eureka County rely on these allotments for summer grazing. Nearly all livestock production in Eureka County is done in concert with BLM grazing allotments.

Though it includes maps displaying the impact of various alternatives on an array of other industries, from locatable minerals to wind and solar energy, the DEIS does not include any maps that provide overlays of grazing allotments and HMA. Absent this information, the non-granular scale of the HMA maps that BLM has produced makes it difficult to tell exactly how grazing allotments overlap with HMA. The County asks BLM to provide maps in the FEIS that remedy these defects and support its determination that the proposed alternatives will directly affect only 82 jobs. Given the information provided by the DEIS, and the statistics we discuss, above, regarding grazing in Eureka County, we believe that livestock grazing on allotments where PHMA accounted for at least 15 percent of the acreage could affect 82 jobs in Eureka County alone. Thus, the DEIS/RMPA is based on inaccurate and/or inadequately explained information. BLM should significantly augment this analysis, on a county level, in the FEIS/RMPA. Previously, Eureka County provided substantial data and information on the socioeconomic linkages with ranching, based on Cooperative Extension and Nevada Department of Agriculture data, that directly refutes BLM's methodology and conclusions in the DEIS.

Finally, Alternatives 3–6 of the DEIS/RMPA are inconsistent with the County's Natural Resources and Land Use Plan and other county policies. The County Plan states that our object is "active management of range resources by permittees rather than by public agencies" and "limiting the role of public agencies to monitoring range condition as per the 1984 Nevada Rangeland Monitoring Handbook and determining compliance with applicable laws.[121] Alternatives 3–6 propose increasingly restrictive management (including exclusion of livestock grazing) by BLM and, contrary to the best available science, limit the role of proper livestock grazing by permittees in creating or sustaining GRSG habitat. BLM contravenes NEPA by its failure to explain this inconsistency and it contravenes FLPMA by not ensuring maximal consistency with County land use plans and policies.

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[117] DEIS at 4-146.

[118] USDA, 2022 Census of Agriculture Eureka County Profile, at *1 (2022) https://www.nass.usda.gov/Publications/AgCensus/2022/Online_Resources/County_Profiles/Nevada/cp32011.pdf .

[119] *Id.* at *2.

[120] *See* https://gbp-blm-egis.hub.arcgis.com/datasets/BLM-EGIS::blm-nv-grazing-allotments/explore?location=39.972103%2C-116.268560%2C8.00.

[121] Eureka County Code, tit. 9 ch. 060(F)(2)(h), (i).

ii. Mining

The County Natural Resources and Land Use Plan states that "[o]ver ninety percent (90%) of the County's employment is in the Natural Resources and Mining sector (including agriculture)."[122] The "primary planning guidance" in our Natural Resources and Land Use Plan states: "It is critical to the welfare of the citizens of Eureka County and the nation that mining on state and federal lands remains an open and free enterprise."[123] In light of this information and FLPMA's and NEPA's respective consistency and consistency disclosure requirements, BLM's analysis of impacts to mining is remarkably cursory. For example, as noted above, BLM's impacts analysis of ACECs fails to consider key, publicly available information regarding the effect of additional administrative requirements (such as a mandated plan of operations even for small projects) or of restrictions on mining activity in certain areas.

Additionally, as noted above regarding Alternative 3, BLM would recommend that certain areas are withdrawn from location and entry under the Mining Law. BLM adds, correctly, that the Secretary of the Interior would need to separately designate lands for withdrawal, and states that "if the Secretary ultimately decided to withdraw the land, such a withdrawal would likely result in a reduction of economic activity in mining sectors."[124] The County understands BLM's view that this recommendation does not constitute an impact. However, we note (as the DEIS does) that the Secretary is currently in the process of evaluating impacts of mineral withdrawal under the 2015 ARMPAs. We ask BLM to include further impact analysis regarding economic effects of the proposed management actions on mineral development.

Impacts to Mining Translate to Impacts to Regional Stability and National Security

The General Mining Law of 1872 encourages individuals to "prospect, explore and develop the mineral resources of the public domain."[125] This policy was again declared and further explained in the Mining and Materials Policy Act of 1970: "it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, mineral, and metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs."[126]

In accord with these policies, Section 102(a)(12) of FLPMA requires BLM to manage public lands "in a manner that recognizes the Nation's needs for domestic sources of minerals."[127] In addition, the Department of the Interior's Climate Action Plan recognizes the national importance of critical minerals and domestic supply chains. Action 3 in the Climate Action Plan

[122] *Id.* ch. 050(A). Tellingly, BLM does not provide its own County-specific employment statistics for Eureka County.

[123] *Id.* ch. 9.060(E).

[124] DEIS at 4-163.

[125] *Ctr. for Biological Diversity v. DOI*, 623 F.3d 633, 654 (9th Cir. 2010) (internal quotation marks omitted).

[126] 30 U.S.C. § 21a.

[127] 43 U.S.C. § 1701(a)(12).

is a "transition to a resilient clean energy economy" with an outcome of climate-resilient infrastructure that supports current energy and mineral resource needs and future energy needs.[128] The BLM should analyze a Climate Action Plan/Multiple-Use Alternative that considers the policies that require optimization of domestic development of minerals.

Particularly, the County does not support restrictions on the development of mineral resources in ACECs. The mitigation hierarchy and implementation of the Nevada State Plan can be applied to allow for responsible development and provide solutions for possible mitigation that can rehabilitate or enhance GRSG habitat that will otherwise continue to be overrun by invasive vegetation following destruction of habitat by wildfires. This is a lawful approach, compliant with FLPMA and other federal law and consistent with the BLM's previous findings regarding the proposed mineral withdrawal for GRSG habitat conservation, recognizing that if the withdrawal did not proceed, only one-tenth of 1 percent of the total withdrawn area was likely to be developed. The mining industry is important to the County's economy, customs and culture and any restrictions proposed by the BLM must include an extensive assessment of the socioeconomic impacts of any restrictions the plans propose be included.

B. BLM does not adequately address impacts to rural counties like Eureka County, including by not incorporating data from the Nevada Economic Assessment Project into its analysis.

In prior RMPA processes, the County has made critical economic impact information available to BLM through locally sourced data and reports. Much of this has been compiled in reports released by the NEAP, a project in which BLM is partner with the University of Nevada, Reno, and the Forest Service. Nonetheless, BLM's assessment of economic impact to rural counties that depend on public lands and proper management of public lands for much of their revenue and provision of services to the public is truncated, and it does not rely on data readily available to BLM. BLM must improve this analysis to comply with NEPA.

BLM states that "[t]he nature and types of social and economic impacts associated with management actions under the alternatives would be similar across GRSG range, however, effects would not be evenly distributed and may be felt at the individual community-level to a greater degree."[129] But it does not assess how those impacts would be felt at the community level. In Appendix 13, the DEIS/RMPA's most detailed socioeconomic impact analysis, BLM states that "[d]ue to the size of the planning area, a narrative is not included here for all relevant communities of place," like counties, "bound together because of where they reside, work, visit, or otherwise spend a continuous portion of their time."[130] BLM refers in a footnote to more detailed information regarding Nevada counties provided in reports developed by the NEAP. The NEAP has its foundations in prior GRSG planning efforts and was intended to be a common baseline data source for Nevada's counties. But it appears to not have been employed in the 2024 RMPA/DEIS. We ask BLM to incorporate these data into the FEIS analysis.

[128] DOI, Climate Action Plan, at 17 (2021).

[129] *Id.*

[130] DEIS, Vol. III at 13-4-1.

Further, BLM acknowledges that "[s]tate and local governments collect a variety of revenues related to the use of natural resources. These revenues could be indirectly impacted by BLM management decisions on GRSG HMAs, if the decisions affect the level of use of natural resources."[131] Indeed, the Eureka County Natural Resources and Land Use Plan states that "Eureka County is and will ever be dependent upon natural resources for its economic existence" and that "[m]ining presently contributes the major portion of the County's personal income and tax revenue stream."[132] BLM does not provide any analysis in the DEIS as to how additional hurdles for mineral exploration and development associated with ACECs, especially, would affect county revenues. As we note above, BLM should also address how ACEC designation would affect the County's ability to comply with its primary mandate: providing for the health, safety, and welfare of its citizens.

REQUESTED CHANGE: BLM's socioeconomic impact analysis is based on inaccurate or inadequately explained information. BLM should rely on the NEAP and data produced by Nevada scholars and agencies, including specific data Eureka County previously provide, to more accurately determine—specific to Nevada and its counties—the effect of the RMPA, including ACECs, on mining and ranching and other uses. It should also assess the effect of restrictions on public safety in rural counties that consist largely of federal public land, and should make appropriate modifications to the FEIS/RMPA on the basis of this information.

VI. Technical Comments

A. BLM must recognize the crucial rule that managed livestock grazing plays in creating and maintaining desired GRSG habitat conditions and reducing wildfires that destroy or degrade GRSG habitat.

The DEIS fails to recognize that managed livestock grazing represents an important and cost-effective tool to achieve desired GRSG habitat conditions and to reduce wildfires. Further, increased fuel buildup that will result from economically burdensome and technically ill-advised livestock grazing restrictions in the RMPA will place a burden upon our fire district, where fire protection is heavily implicated with public lands.

BLM's general dismissal of livestock grazing as a tool is not for lack of information regarding the benefits of managed grazing: our cooperating agency comments on the ADEIS, incorporated here, lay out in detail studies showing benefits of livestock grazing for GRSG. Further, BLM dismissed without considering a proposed alternative "alternative relative to livestock grazing management to facilitate sagebrush recruitment and survival" which would "develop allotment management plans, cooperatively with willing permittees, with objective utilization levels sufficient to facilitate sagebrush recruitment and survival."[133] Ignoring the best available science and our comments, Alternative 3 would close millions of acres to livestock grazing and other RMPA restrictions could severely impact grazing.

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[131] *Id.* at 13-3-29.

[132] Eureka County Code, tit. 9 ch. 040(H), 050(A).

[133] DEIS at 2-5.

The County heavily relies on ranching conducted on or in concert with federally managed land, and our Land Use and Natural Resources Plan supports "increasing grazing capacity and other economic incentives to promote private investment in range improvements including, but not limited to, fencing, seeding, water development, improved grazing systems, brush control, pinion/juniper eradication, proper fire management and noxious weed control."[134] As the DEIS recognizes, "[i]n the 2015 USFWS not-warranted determination on GRSG, the agency determined that meeting Land Health Standards, including proper management of livestock numbers, season of grazing and application of adaptive management strategies minimized population level effects on the species."[135] Additionally, "USFWS found improper grazing by domestic livestock and free-roaming horses and burros can have negative impacts to sagebrush and GRSG at local scales . . . but previously did not find it was a principal factor affecting the status of the species."[136]

BLM's own analysis indicates that managed grazing is an important tool in GRSG habitat conservation instead of a threat to GRSG. Thus, BLM should reject in the FEIS/RMPA the grazing restrictions imposed in the RMPA including Alternative 3. Based on the terms and conditions of livestock grazing permits, the rangeland health regulations, authority of BLM to administering grazing permits that make progress towards established standards and guidelines, BLM exerts significant control over livestock grazing that it does not, for example, over WHB. In light of the potential to enhance protection of habitat areas (especially for management of fine fuel loads and invasive plants) properly managed livestock grazing should be the focus rather than grazing prohibition and restriction. BLM's analysis of alternatives should start from the proven premise that managed livestock grazing are a benefit for GRSG, and the analyses should consider how to further incorporate managed livestock grazing into the protection strategy.

The County suggests measures to allow for and streamline Temporary Non-Renewable (TNR) or other nonrenewable allocation of forage for fuels reduction in general and specifically including measures to allow for targeted cheatgrass control or other fine fuels control through TNR-type measures. BLM should include best available science related to livestock grazing: this will permit a reasoned choice between alternatives.

Finally, we note that in Nevada, much prime sage grouse habitat, especially late brood rearing habitat—often the most limited habitat type available to GRSG—is on private lands. In most cases, these private lands are associated with public lands grazing permits. We have seen increased restrictions on BLM allotments simply increase pressures to private land and have also seen ranches choose to subdivide and develop (destroying GRSG habitat) due to increases in BLM regulatory pressure and associated financial and logistical burdens. BLM should include in the FEIS/RMPA discussion of undue restrictions to ranchers on BLM lands may create a feedback loop that incentivizes ranchers to "make up" the financial loss by selling off or developing important private rangelands.

B. The disturbance cap calculation should not include non-federal land.

[134] Eureka County Code tit. 9 ch. 060(F)(2)(c).

[135] DEIS at 2-103.

[136] *Id.*

As an initial matter, the County notes that it does not support use of a disturbance cap as inconsistent with the State Plan. However, we note that for Alternatives 3–6, BLM plans to include in its disturbance cap calculation disturbance on non-BLM lands. It states that such analysis is "consistent with the BLM's responsibility to consider cumulative impacts when making decisions for activities on public lands."[137] This misunderstands both RMPAs and the cumulative effects analysis that NEPA requires.

As noted, an RMPA is intended to set the scene for BLM's more site-specific decisions. This is evident in BLM's statement that, for the RMPA, "[t]he cumulative effects analysis area for GRSG is the same as the planning area, which encompasses the entirety of the GRSG current range."[138] This massive cumulative effects area is only possible in an RMPA where the goal is to benefit a species.

Whenever BLM permits a project, it must make a site-specific decision as to the area in which cumulative effects analysis is appropriate.[139] Indeed, courts have repeatedly held that cumulative effects analysis that does not include "site-specific information" does not constitute the hard look that NEPA requires.[140] It is inappropriate for BLM to predetermine the scope of the cumulative effects analysis at the RMPA stage. The DEIS/RMPA is required to consider cumulative effects as part of its NEPA analysis of the RMPA; it is not meant to prescribe what cumulative effects should be considered as part of BLM's NEPA analysis of other, future federal actions. Here, BLM's across-the-board approach to the cumulative effects analysis does not comport with NEPA, and opens BLM to litigation risks.

C. BLM should address lingering issues with wild horses and burros that it has not frankly described or adequately considered in this or previous RMPs/EISs.

As BLM summarizes them in the DEIS/RMPA, the 2015 Nevada GRSG ARMPA required BLM to "[m]anage wild horse and burro populations within established appropriate management levels (AML); [i]ncorporate GRSG habitat objectives into wild horse and burro management (e.g., herd management area plans, AML) monitoring, and gather prioritization, with prioritization of such activities in SFAs, then PHMA, then GHMA; [p]rioritize gathers in GRSG SFAs and PHMA unless removals are necessary in other areas to address higher priority issues, including herd health impacts."[141]

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[137] DEIS at 2-32.

[138] *Id.* at 4-229.

[139] 40 C.F.R. § 1508.1(g)(3).

[140] *Or. Nat. Res. Council v. BLM*, 470 F.3d 818, 822 (9th Cir. 2006) (EA was insufficient where BLM did not "consider *quantified and detailed information regarding the cumulative impact of the* [*specific*] *project* combined with past, present, and reasonably foreseeable logging projects. Second, the EA was tiered to other documents that did not contain *the requisite site-specific information about cumulative effects*" (emphasis added).); *see also Klamath-Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 997 (9th Cir. 2004) ("What is missing in the [EA] documentation, however, is any specific information about the cumulative effects.").

[141] DEIS at 2-114.

In Eureka County's experience, these provisions have not been adhered to before or after institution of the 2015 ARMPAs. As BLM acknowledges in the DEIS, unmanaged WHB grazing amounts to a real threat to GRSG. It also violates FLPMA: when BLM develop an RMP, it must govern subsequent management decisions "in accordance with" that RMP.[142] FLPMA's directive "prevent[s] BLM from taking actions inconsistent with the provisions of a land use plan."[143]

As examples, we have documented a 2013 gather of 792 horses from the Diamond Complex. More horses were gathered than anticipated due to poor physical health as well as compromised range conditions. The BLM estimated 78 horses remained on the entire Complex after the gather, but a subsequent census flight found that at least 450 horses, more than 200% of AML.[144] Recent reporting documented 1,161 horses on the Roberts Mountain Complex; this herd management area (HMA) has an AML of between 110 and 184 horses.[145]

The FEIS/RMPA should address this issue and be frank and propose real, actionable solutions to the WHB issue that were not identified in previous land use plans. Among BLM's considerations should be that previous plans failed to acknowledge that WHB remain on the public lands on a year-round basis and are not managed for the benefit of the rangeland resource that supports their very existence. There typically are no rest periods for the range in HAs or HMAs, riparian areas nor wetland meadows. Numbers control is all that the BLM have available to them today to effectively manage horses. In addition, attempts to restore rangelands to benefit GRSG within HMAs is improbable due to restrictions that would be applied if BLM attempted to protect new seeding or defer use from an area for a period of time to allow for natural regeneration. Fencing and other structural improvements would also become a real challenge.

BLM's failure to properly manage WHB has created a situation, in many cases, where the burden is now on the other users of the land, primarily wildlife (including GRSG) and ranchers, to pay the price for BLM's shortfall. The FEIS should explore alternatives.

D. BLM should not use Sage-grouse Habitat Assessment Framework (HAF) and "intactness" to support management actions; it is not best available science. Instead, there should be focus on Ecological Site Desrcriptions (ESD) and associated State and Transition Models (STM).

The DEIS includes many descriptions of the need to protect or conserve "intact sagebrush ecosystems," "intact habitats," "intact landscapes," etc. Yet, what is meant by "intactness" is never defined and open to extreme subjectiveness. We often see the word "intact"

[142] 43 U.S.C. §§ 1712(a), 1732(a).

[143] *Norton v. S. Utah Wilderness All.*, 542 U.S. at 69 (citations omitted); *see also* 43 C.F.R. § 1610.5-3(a) ("subsequent more detailed or specific planning [must] . . . conform to" the RMP).

[144] *See* Nevada Association of Counties, *Overpopulation of Wild Horses and Burros in Nevada Has Severe Impacts on Both Health of Horses as Well as the Ecological Health and Sustainability of Nevada's Rangelands*, at *5 (2014) https://www.naco.org/sites/default/files/documents/Nev-Assoc-Co-WHB-Facts-Photos.pdf.

[145] Greg Haas, *BLM plans to take more than 1,000 wild horses in roundup northeast of Eureka*, 8 News Now (Oct. 20, 2023); BLM, *2024 Roberts Mountain Complex Wild Horse Gather* (Oct. 22, 2023) https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada-battle-mountain-do-mount.

misapplied in the terms of ecological function or ecological potential. For example, common dictionary definitions of "intact" include terms such as "not altered," "untouched," and "not influenced or swayed." Managed rangelands can never be "not altered" or "untouched" due to the extent of temporal and geographical habitation of mankind. "Intact" is not defined or considered by the rangeland science community for this very reason. All ecosystems are "intact" in some functional way, even degraded ecosystems. Relying on ESDs and their associated STMs instead informs locations and practices that have a chance for success given the known restoration pathways in the STM. Depending on the given state of any ESD, projects and management influence the site dynamics in different ways. Any given ESD has a range of "potential" states (i.e.,vegetation characteristics) based on climatic conditions, past and present disturbance, and other field conditions. Each ESD has multiple states it can exhibit. An understanding and description of the ecological shifts or transitions that have occurred due to legacy management are imperative in order to frame management actions and implement successful practices. Ecological function (while maybe not in a desired ecological state) still exists even in ecologically degraded sites (e.g., ecological state 2 and many community phases of even state 3). But by a strict definition, any ecological site not in reference state (which is arguably every ESD in GRSG habitat) cannot be "intact" by pure definition. They may be at risk of crossing an ecological threshold, but that does not mean function is not "intact." As an example, research has shown high usage by sage grouse of sagebrush "islands" with cheatgrass-dominated understories. Is "intact" looking at the sagebrush component alone or in reference to the ESD? Also, how is an "intact" area defined/delineated? This needs clarified to overcome future wrangling or conflict over what the "intact" area is and how it is determined. We suggest changing "intact" throughout to applicable variations of something like "stable ecological state" or "desired ecological state." Also, the reason much of Nevada's BLM managed land could be characterized as intact is because of the past and current management and stewardship of Nevada's ranchers, hunters, recreationists, and others. Yet the DEIS sets the stage for conflict and working against those who have proven track records and should be worked with. The undue restrictive management on "intact landscapes" would prove to punish those land users that have stewarded the lands to be in the condition that they are today.

We still argue such heavy reliance on the HAF is misguided and not the best available science. While the HAF may be useful in helping define **desired** habitat suitability, it does nothing to account for actual, attainable ecological potential and the ability of any ecological site to react to inputs to "transition" to a more desirable state. Table 8-1, Habitat Indicators, is very biased in many ways and not grounded in ecological reality for many ESDs. For instance, it calls for greater than 7% residual and live perennial grass cover where shrub cover is greater than 20%. Yet, many ESDs and STMs show that perennial grass cover plummets at sagebrush cover greater that 20%. Higher sagebrush cover is actually a negative transition pathway for some ESDs to degraded sites. It is crucial for BLM to also include very clear use of ESDs and their associated STMs. While there is language referencing ESDs and STMs, the language is not firm and still leaves open "translation" of the habitat objectives to extreme bias and subjectiveness setting this whole process is up for failure given the known and proven shortcomings of the HAF. Instead of the HAF, we request full use of BLM Policy Handbook H-1734, Interagency Ecological Site Handbook for Rangelands. The DEIS on p. 3-7 states that the "Habitat Assessment Framework (HAF) fills the need for a multiple-scale, Sage-Grouse

habitat assessment tool that can be easily integrated into the BLM landscape monitoring approach." ESDs and associated STMs are the already developed tool that does what the HAF doesn't – frame ecological site status based on real, ecological potential and ecological realities. BLM Policy Handbook H-1734 requires BLM (and USFS and NRCS) to use "a standardized system to define and describe rangeland ecological sites" and "[i]mplementation of this policy…will facilitate the stratification of rangeland landscapes according to their ability to respond similarly to ecological stressors" and to use ESDs to "provide land managers the information needed for evaluating suitability of the land for various land-use activities, the capability to respond to various management activities or disturbance processes, and the ability to sustain productivity over the long term." Failure to put use of ESDs and their associated STMs front-and-center in GRSG habitat objectives sets up GRSG management for subjectiveness while breeding unnecessary conflict and implementing undue and unnecessary land use restrictions. The following references also support the use and application of these tools:

- BOLTZ, S., AND G. PEACOCK. 2002. Ecological sites: understanding the landscape. Rangelands 24:18-21.

- BRISKE, D.D., B.T. BESTELMEYER, T.K. STRINGHAM, AND P.L. SHAVER. 2008. Recommendations for development of resilience based state-and-transition models. Rangeland Ecology & Management 61:359-367.

- SOIL SURVEY DIVISION STAFF. 1993. Soil survey manual. Soil Conservation Service US Department of Agriculture Handbook 18.

- STRINGHAM, T.K., P. NOVAK-ECHENIQUE, P. BLACKBURN, C. COOMBS, D. SNYDER, AND A. WARTGOW. 2015. Final report for USDA ecological site description state-and-transition models, Major Land Resource Area 28A and 28B Nevada. University of Nevada Reno, Nevada Agricultural Experiment Station Research Report 2015-01. p. 1524. Available at: http://www.cabnr.unr. edu/resources/MLRA.aspx.

- STRINGHAM, T.K., P. NOVAK-ECHENIQUE, P. BLACKBURN, D. SNYDER, AND A. WARTGOW. 2015. Final report for USDA ecological site description state-and-transition models by disturbance response groups, Major Land Resource Area 25 Nevada. University of Nevada Reno, Nevada Agricultural Experiment Station Research Report 2015-02:572. Available at: http://www.cabnr.unr.edu/resources/MLRA.aspx.

- STRINGHAM, T.K., P. NOVAK-ECHENIQUE, D. SNYDER, S. PETERSON AND K. SNYDER. 2016. Disturbance Response Grouping of Ecological Sites Increases Utility of Ecological Sites and State-and-Transition Models for Landscape Planning in the Great Basin. Rangelands 38(6):371-378.

VII. The west-wide planning scale of the 2024 GRSG DEIS/RMPA violates FLPMA and BLM regulations.

In addition to the Nevada District Court's remand of the 2015 RMPAs for NEPA violations, the ARMPA was adopted under and landscape scale planning process that is now clearly

impermissible given the repeal of BLM Planning 2.0.[146] This landscape scale planning is now clearly unlawful. In 2016, BLM adopted the Planning 2.0 rule to change the agency's planning process to shift to landscape-level management approaches that would transcend traditional administrative/local boundaries. Local governments expressed deep concerns that Planning 2.0 would shift land management decisions from local officials to a national level and, legal challenges were brought against the rule as violating FLPMA and other federal laws.[147] State Representatives asserted that the rule would "dramatically shift planning away from local communities to the BLM headquarters, opening the door for special interests in Washington D.C. to have greater influence on the BLM's planning process than those who live near and rely on public lands."[148] On March 27, 2017, Planning 2.0 was overturned under the Congressional Review Act. [149] Therefore, any planning effort must ensure local decision making which the current RMPA effort does not.

The GRSG RMPA is a land use plan developed by the BLM Washington Office for a landscape scale: it stretches over nearly all BLM land in the western states. But BLM regulation and FLPMA prohibit BLM headquarters from imposing national one-size-fits-all policies through west-wide land use planning like this RMPA. Such west-wide planning is inconsistent with a fundamental purpose of FLPMA's land use planning process: "in questions of resource balance, decentralization of decisionmaking is vital. The proper balance of uses in one [area] might not be appropriate on another. Local options are desirable" because "[t]he orientation of people using the [public land]s varies."[150]

A. The County appreciates that BLM can, and often should, consider landscape-scale issues in its land use planning.

As an initial matter, the County understands that BLM can use some landscape-scale analysis and supports proper use of such analysis in land use plans. Courts have recognized that "Congress conferred broad discretion upon [BLM] to determine how best to achieve [its multiple use and sustainable yield] mandates,"[151] and beyond the land use planning context, BLM has previously used landscape scale analysis. For example, the Energy Policy and Conservation Act of 2000 directed BLM and the Forest Service to review oil and gas lease terms to ensure consistency across administrative boundaries. By contrast, in addition to specifically disapproving of landscape scale planning under the Congressional Review Act, Congress omitted any mention of landscape scale planning in the section of FLPMA setting forth standards for land use planning

[146] The 2015 RMPA was, as described by USFWS, "a significant shift from management focused within administrative boundaries to managing at a landscape scale." 80 Fed. Reg. 59858, at 59874 (Oct. 2, 2015).

[147] *Kane County, et al. v. U.S.*, Case No. 2:16-cv-01245-BCW (D. Utah Dec. 2016).

[148] State Perspectives on BLM's Draft Planning 2.0 Rule: Hearing before the H. Subcomm. on Oversight and Investigations, 114th Cong. (July 7, 2016) (Hearing Memorandum from the Chairman for the Subcomittee on Oversight and Investigations, Committee on Natural Resources for the United States House of Representatives).

[149] On March 27, 2017, H.J. Res. 44 was signed into law, overturning Planning 2.0 under the Congressional Review Act.

[150] Public Land Law Review Commission, *Study of Multiple Use Concepts and Land Use Decisions on Public Lands*, at 50-51 (Sept. 21, 1970). The Commission's work was the direct impetus for Congress's drafting of FLPMA.

[151] *Or. Nat. Desert Ass'n v. Gammon*, No. 06-523-HO, 2007 U.S. Dist. LEXIS 48083, at *7–8 (D. Or. June 28, 2007).

and has not amended FLMPA to include such language. "When Congress knows how to achieve a specific statutory effect, its failure to do so evinces an intent not to do so."[152] Congress did not intend that land use planning take place at a west-wide or national scale.

Additionally, the Secretary of the Interior has required that BLM offices coordinate to respond to certain broad threats. Secretarial Order 3289A1, issued in 2009, states that, "[g]iven the broad impacts of climate change, management responses to such impacts must be coordinated on a landscape-level basis." BLM launched a Rapid Ecoregional Assessments (REA) program in response to this mandate. This kind of analysis or coordination is distinct from land use planning, which must abide by BLM regulations that delegate land use planning to field managers and which must also abide by FLPMA's coordination and consistency requirements. Indeed, BLM's own information bulletin on a Landscape Approach for Managing the Public Lands acknowledges the difference between the landscape scale analysis appropriate in a REA and the more local ambit of land use planning. It describes its development of a "proposal for incorporating, or 'stepping-down' the REAs into land use planning and day-to-day management activities. This step-down process is a key aspect of [BLM's] efforts to more fully integrate broad-scale and local-scale ecological information and program direction."[153]

Nor does BLM need to develop ten- or 11-state RMPAs to assess landscape considerations in its RMPs. BLM's Land Use Planning Handbook states that regional considerations may be incorporated into a local plan: "[f]or example, if broad-scale (regional) analysis identifies issues such as invasive weeds that cross BLM field office boundaries or other jurisdictional boundaries, desired outcomes and management actions in a planning area may be described and addressed in the context of the broader landscape."[154] BLM has already accomplished this result in its GRSG planning. In 2015 and 2019 BLM developed GRSG habitat conservation plans that coordinate across western states in a manner that, in the County's current understanding, hewed at least more closely to statute and regulation. The 2015 GRSG RMPAs amended several western RMPs on a state-by-state basis which interlocked to provide for landscape-wide GRSG habitat conservation. The 2019 RMPAs did the same. But in those planning efforts, BLM state offices created distinct land use plans for each of the states involved in the planning effort. The integration between landscape-scale analysis and local/regional scale land use plans that BLM points to in its information bulletin and Handbook—and that BLM appears to have practiced in the 2015 and 2019 GRSG planning efforts—use BLM's discretion to fulfill its multiple-use mandate in a manner consistent with FLPMA and BLM regulation. By contrast, in the 2024 GRSG DEIS/RMPA, BLM attempts to formulate four new planning alternatives (Alternatives 3–6) that, if adopted, would apply with minimal state-specific management directives to all ten states involved in the planning effort—an impermissible west-wide one-size-fits-all approach.

B. The RMPA violates BLM regulations, which identify the field office rather than the Washington Office as the seat of RMPA decisionmaking.

[152] *Fish v. Kobach*, 840 F.3d 710, 740 (10th Cir. 2016).

[153] BLM, *The Bureau of Land Management's Landscape Approach for Managing the Public Lands IB 2012-058* (Apr. 3, 2012) https://www.blm.gov/policy/ib-2012-058.

[154] BLM, *Land Use Planning Handbook* at 14.

BLM is required by its own regulation to achieve resource planning through plans developed at a field office or state level. 43 C.F.R. § 1601.0-4(c) identifies field managers as the officials who "will prepare resource management plans, amendments, revisions and related environmental impact statements" on a local (i.e., field office) or regional (i.e., resource area) scale. By contrast, state directors "provide quality control and supervisory review" for RMPs, and the Secretary of the Interior and the BLM Director provide "[n]ational level policy and procedure guidance for planning."[155] Because field managers will presumptively prepare land use plans, the "[r]esource area or field office . . . is, in most instances, the area for which resource management plans are prepared and maintained."[156] BLM's Land Use Planning Handbook encourages "planning on a variety of scales, including both local and regional"—but not national.[157]

Ignoring these presumptions and roles, BLM states on the ePlanning site for the DEIS/RMPA states that the 2024 GRSG DEIS/RMPA was prepared by WO-230, BLM's Washington Office. BLM is required to follow its own regulations mandating local or regional scale land use planning or to give a reasoned explanation for its departure.[158] Preparation of the RMPA at the national level contravenes BLM's own regulations, and BLM gives no reasoned explanation for it.

If BLM seeks to change to its regulations to permit landscape scale land use planning, it must do so through notice-and-comment rulemaking.[159] BLM has not done so here because it cannot: west-wide land use planning attempted in the RMPA replicates the landscape-scale planning that Congress rejected when it used the Congressional Review Act (CRA) to overturn BLM's Planning 2.0 regulation.

In 2016, BLM issued a rule it called Planning 2.0, which, in part, provided procedures for landscape scale planning like the west-wide RMPs. In early 2017, however, Congress issued a joint resolution disapproving of Planning 2.0; the President signed that resolution, overturning Planning 2.0.[160] Under the CRA, a rule subject to such disapproval "may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted [by Congress]

[155] 43 CFR § 1601.0-4(a), (b).

[156] *Id.* § 1601.0-5(m).

[157] BLM, Land Use Planning Handbook H-1601-1, at 1.

[158] *See New Mex. Farm & Livestock Bureau v. Dep't of Int.*, 952 F.3d 1216, 1230–31 (10th Cir. 2020) ("[A]gencies are under an obligation to follow their own regulations, procedures, and precedents, or provide a rational explanation for their departure. When an agency does not comply with its own regulations, it acts arbitrarily and capriciously." (citation, original brackets, and internal quotation marks omitted)).

[159] *See Air Transp. Ass'n of Am. v. FAA*, 291 F.3d 49, 56 (D.C. Cir. 2002) (rulemaking requires notice and comment, and "'[r]ulemaking,' as defined in the [Administrative Procedure Act], includes not only the agency's formulation, but also its modification, of a rule").

[160] P.L. 115–12 (Mar. 27, 2017).

after the date of the joint resolution disapproving the original rule."[161] Congress has not passed a law specifically authorizing landscape scale land use planning.

The County notes at least three similarities between the GRSG RMPA and Planning 2.0:

1. Planning 2.0 removed language stating that the RMP/RMPA "shall be prepared and maintained on a resource or field office area basis," thus permitting land use planning on a landscape or national scale.[162] As Planning 2.0 contemplated, but against Congress' intent, BLM's Washington Office prepared the 2024 GRSG DEIS/RMPA.

2. Planning 2.0 axed the requirement that state directors authorize a planning area broader than the resource or field office basis. Instead, it provided that "[i]f a planning area does cross State boundaries, the BLM Director will select the appropriate deciding official, usually from among the State Directors involved, and [the Director will] determine the final planning area."[163] As Planning 2.0 contemplated, but against Congress' intent, the BLM Director appears to have selected the planning area for the DEIS/RMPA.

3. Planning 2.0 modified the requirement that BLM consider the "[d]egree of local dependence on resources from public lands" when developing a land use plan. Instead, Planning 2.0 would have required BLM to consider "[t]he degree of local, regional, national, or international importance of these goods, services, and uses" of public land.[164] As Planning 2.0 contemplated, but against Congress' intent, economic analyses in the DEIS/RMPA includes very few details about the local situation of a county like the County, where the vast majority of land is public land.

BLM regulations situate land use planning at the local or regional rather than national level. The 2024 DEIS/RMPA violates BLM's regulation.

C. FLPMA and BLM regulations do not give BLM's Washington Office authority to prepare or approve RMPAs.

Arguments that FLPMA and other BLM regulations authorize west-wide RMPAs FLPMA fail. As for regulation, a BLM state director can authorize a planning area broader than a field office,[165] but we have found no evidence that any state director has done so for the DEIS/RMPA; instead, the planning scale has been determined by the Washington Office. Additionally, BLM regulation

[161] 5 U.S.C. § 801(b)(2). The CRA adopts the APA's definition of a rule, "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." *Id.* § 804(3); *see also id.* § 551.

[162] *Compare* 43 C.F.R. § 1610.1(b)(4) *with* 81 Fed. Reg. 89,580, 89,663 (Dec. 12, 2016).

[163] 81 Fed. Reg. at 89,582.

[164] *Compare* 43 C.F.R. § 1610.4-4(g) *with* 81 Fed. Reg. at 89,667.

[165] *See* 43 C.F.R. § 1610.1(b)(4) ("A resource management plan shall be prepared and maintained on a resource or field office area basis, unless the State Director authorizes a more appropriate area."); BLM, Land Use Planning Handbook H-1601-1, at 14 ("State Directors may also establish regional planning areas that encompass several field offices and/or states, as necessary.").

assumes that a single state director, not state directors plural, will authorize preparation of an RMP/RMPA spanning an area larger than a field office. The DEIS/RMPA involves ten state directors, and BLM regulations do not clarify whether, in such a case, all state directors or just one state director must authorize the expansive planning area. This lack of clarity fits with the idea that BLM regulations do not contemplate a planning area so large: a state director, whose work is with a single state and, perhaps, the areas immediately bordering that state, would find it difficult to develop the expertise necessary to authorize west-wide land use planning.

Further, while FLPMA provides that the Secretary of the Interior must develop land use plans,[166] the Secretary is bound by regulations that delegate land use planning to field managers: she cannot resume that power without amending the existing regulation. The Supreme Court has made repeated holdings to this effect. "[R]egulations validly prescribed by a government administrator *are binding upon him as well as the citizen*."[167] Thus, for example, where "regulations of the Attorney General delegated certain of his discretionary powers to the Board of Immigration Appeals and required that Board to exercise its own discretion on appeals in deportation cases . . . so long as the Attorney General's regulations remained operative, he denied himself the authority to exercise the discretion delegated to the Board even though the original authority was his and he could reassert it by amending the regulations."[168] Here, the Secretary delegated land use planning authority to field managers, and because the regulation that delegated that authority remains operative, the Secretary has no authority to exercise, herself, the land use planning power.

Neither FLPMA nor BLM regulation authorizes landscape-scale planning.

D. BLM's regulatory intent is to require local or regional-scale land use planning: BLM previously revised its regulations to ensure that BLM headquarters does not develop land use plans.

As described above, BLM's regulations clearly require that land use planning take place on the local or regional scale.[169] But even if the regulations were ambiguous, BLM's regulatory intent is to situate land use planning at the local or regional level: BLM's first revision of its land use planning regulations changed its regulations to ensure that BLM headquarters does not develop land use plans.

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[166] 43 U.S.C. § 1712(a) ("The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands.").

[167] *Service v. Dulles*, 354 U.S. 363, 372 (1957) (emphasis added).

[168] *Nixon v. United States*, 418 U.S. 683, 695–96 (1974); *see also Am. Vanguard Corp. v. Jackson*, 803 F. Supp. 2d 8, 14 (D.D.C. 2011) ("[W]here an agency official delegates authority to a subordinate, the official binds himself by such delegation and may not exercise such powers absent express retention of them.").

[169] If a regulation's language is clear, a court "must apply its plain meaning." *Qwest Corp. v. Colo. PUC*, 656 F.3d 1093, 1099 (10th Cir. 2011). "If the regulation is ambiguous, then [a court] look[s] beyond the plain language, examining regulatory intent and overall statutory construction." *Id.* (brackets and internal quotation marks omitted).

The first version of the land use planning regulations, published in 1979, provided—consistent with the current regulations—that "[n]ational level policy and procedure guidance for planning shall be provided by the Secretary and the Director."[170] Differing from the current regulations, they added: "The Director may assume approval responsibility for a specific plan and related environmental impact statement if it is deemed necessary."[171] Just four years later, BLM removed this sentence from its regulations.[172] It explained that it made these changes to its regulations as a result of experience gained in drafting its first resource management plans and in response to comments from the public identifying "burdensome and counter-productive" provisions of the regulations.[173] Though the revision stripped the Director of land use planning authority, BLM retained language, still extant in its regulations, providing that "[r]esource management plans, amendments, revisions and related environmental impact statements shall be prepared by District or Area Managers, and approved by State Directors."[174]

BLM has made clear its regulatory intent that the BLM Director should not develop land use plans, as she has done with the west-wide RMPAs.

REQUESTED CHANGE: BLM cannot lawfully undermine, bypass, or render impracticable FLPMA's cooperative federalism framework by designating impracticably large planning areas that exceed the local and regional scale. The authority and discretion to prepare and approve RMPs/RMPAs sits at the local and state level; this ensures that plans are developed with meaningful state and local government input and with reasonable deference to, state and local resource-related plans and policies. BLM should abandon the DEIS/RMPA's ten-state approach and revert to the state-specific planning approach used in 2019.

VIII. The 2021 ROD establishes that BLM's most current GRSG habitat conservation plan for Nevada is the 2019 RMPA.

Eureka County is concerned and questions why the 2021 ROD is not being implemented even though there is no injunction or other legal basis for BLM to avoid implementation of its 2020 ROD and BLM never even presented the 2021 ROD to the Idaho Court. Frankly, with the clarifying 2020 RMPA and 2021 ROD (which are not enjoined), there is no need for reopening the 2015 RMPA. BLM should dispense with the current effort and instead implement the 2021 ROD and allow the 2020 RMPA to work and prove itself.

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[170] 44 Fed. Reg. 46,386, 46,393 (Aug. 7, 1979).

[171] *Id.*

[172] *See* 48 Fed. Reg. 20,364, 20,368 (May 5, 1983) (providing simply that "[n]ational level policy and procedure guidance for planning shall be provided by the Secretary and the Director.").

[173] 46 Fed. Reg. 57,448, 57,449 (Nov. 23, 1981) (proposed rulemaking to amend land use planning regulations; this proposal culminated in the 1983 rule).

[174] 48 Fed. Reg. 20,364, 20,368–69 (1983 rule); *see* 44 Fed Reg. at 46,393 (1981 rule providing that "Resource Management plans, amendments, revisions, and related environmental impact statements shall be prepared by District Managers, and reviewed and concurred in by State Directors. Resource management plans, amendments and revisions are then approved by District Managers."); 43 C.F.R. § 1601.0-4 (Current rule stating that "Field Managers will prepare resource management plans, amendments, revisions and related environmental impact statements. State Directors must approve these documents.").

BLM maintains the erroneous view that the 2019 RMPAs are not effective because they were preliminarily enjoined. But the court never vacated the 2019 RMPAs. And BLM has acknowledged in court filings that a BLM "action" or "planning" other than a decision on the merits (such as a land use plan) could resolve any issues with the 2019 RMPA, mooting the injunction. BLM does not explain in the DEIS/RMPA why a 2020 supplemental EIS (SEIS) that it prepared specifically to address issues raised in the preliminary injunction order, upon a change in administration, suddenly was ignored by the agency. It does not explain why its 2021 ROD deciding that the SEIS did not require any changes to the 2019 RMPAs is not BLM's most current, effective decision on GRSG habitat conservation. Nor does BLM explain why it has not taken any action to move forward the case—stayed since 2021—that it has unilaterally (and unlawfully) simply decided not to implement its decision in its 2021 ROD. BLM must make these explanations in the FEIS/RMPA and demonstrate how it is not in violation of the APA and NEPA.

The DEIS/RMPA's Introduction explains that BLM is not implementing the 2019 RMPAs because they were preliminarily enjoined by the United State District Court for the District of Idaho in *Western Watersheds Project v. Schneider*, 417 F. Supp. 3d 1319, 1335 (D. Idaho 2019). Without much analysis, BLM concludes: "Until the court makes a final ruling in the case or otherwise lifts the preliminary injunction, the BLM is enjoined from implementing the decisions from the 2019 RODs, and as such the actions contained in the 2015 RODs remain in effect."[175]

A. BLM has acknowledged that an "action" or "planning" can moot the injunction. The 2021 ROD has.

BLM's conclusion that it must implement the 2015 RMPAs reads the court's decision superficially. Enjoining the 2019 RMPAs, the court held: "BLM is enjoined from implementing the 2019 BLM Sage-Grouse Plan Amendments for Idaho, Wyoming, Colorado, Utah, Nevada/Northeastern California, and Oregon, until such time as the Court can adjudicate the claims on the merits. The 2015 Plans remain in effect during this time."[176] In May 2021, at BLM's request, the court stayed proceedings in *Schneider*, requiring BLM to submit regular status reports updating the court on its GRSG planning efforts. Crucially, BLM noted in an early status report that it "may take actions, or initiate planning, that would obviate the need to proceed to the merits of the claims regarding compensatory mitigation policy and the 2019 Plans."[177] In its most recent status report, filed May 21, 2024, BLM reiterated this statement.[178] BLM apparently presumes that the 2024 DEIS/RMPA is an "action" or "planning" that renders void the court's order enjoining the 2019 plans.

BLM does not, but should, address in the DEIS/RMPA an "action" subsequent to the 2019 RMPAs and prior to the 2024 planning effort that has intervened to render the injunction moot. In 2020, BLM issued a SEIS supplementing the 2019 Nevada RMPA and directly responding to issues raised in the District of Idaho litigation and the court's preliminary injunction. That SEIS, BLM said, was

[175] DEIS at 1-3.

[176] *W. Watersheds Project v. Schneider*, 417 F. Supp. 3d at 1335.

[177] Defs.' Status Report, *W. Watersheds Project v. Schneider*, No. 1:16-CV-83-BLW (D. Idaho May 10, 2021), ECF 282 at 4.

[178] Defs.' Status Report, *W. Watersheds Project v. Schneider*, No. 1:16-CV-83-BLW (D. Idaho May 21, 2024), ECF 330 at 3.

prepared in order to "review BLM's previous [2019] NEPA analysis, clarify and augment it where necessary, and provide the public with additional opportunities to review and comment. The FSEIS will help the BLM determine whether its 2015 and 2019 land use planning and NEPA processes have sufficiently addressed Greater Sage-Grouse habitat conservation or whether the BLM should initiate a new land use planning process to consider additional alternatives or new information."[179] As a result of this analysis, BLM issued a ROD in 2021 which "determined that [BLM's] decade-long planning and NEPA processes have sufficiently addressed Greater Sage-Grouse habitat conservation and no new land use planning process to consider additional alternatives or new information is warranted."[180]

BLM does not explain why its conclusion has changed, requiring it to initiate the 2024 planning effort. Nor does it explain its effective and unlawful rescission of the 2019 RMPAs and the 2021 ROD. BLM does not have "inherent authority" to withdraw a land use plan revision ROD "absent compliance with the FLPMA's formal notice and comment proceedings."[181] Though BLM can amend land use plans, it must "follow[] procedures that," among other requirements, "require public participation."[182] Nor does an injunction, without vacatur, allow BLM to withdraw a land use plan without following the usual procedures. BLM cannot withdraw a land use plan, absent proper process, as a result of a "legal error" in the plan revisions.[183] The Supreme Court has held much the same: it recently rejected as arbitrary and capricious the Department of Homeland Security's reversal of policy to determine that the Deferred Action for Childhood Arrivals (DACA) "program should be terminated" because the Fifth Circuit had concluded that a similar program was unlawful.[184]

BLM knows this is unlawful because in the very same case, Judge Winmill held that where BLM does not provide a reasoned explanation to support its change in position (there, regarding the need for the proposed mineral withdrawal, here, regarding its 2021 ROD affirming the 2019 RMPAs), the BLM's action was arbitrary and capricious and unlawful. The Court vacated the BLM's cancellation of the mineral withdrawal and remanded the decision to the BLM for further proceedings, including re-initiation of the NEPA process. Here, the BLM has not explained how it thinks it could lawfully simply ignore its last issued 2021 ROD with no reasoned explanation for this drastic change in policy that occurred with the change in administration.

BLM acknowledges that the district court did not vacate the 2019 RMPAs: indeed, it explains that the 2019 RMPAs are "the No Action alternative because [they] reflect[] management currently

[179] BLM, Nevada and Northeastern California Greater Sage-Grouse Final Supplemental Environmental Impact Statement, Abstract (Nov. 2020). BLM issued a SEIS and ROD for six states in which it conducted a 2019 planning process; we refer here only to the SEIS and ROD for Nevada and Northeastern California.

[180] 2021 ROD, *supra* n.81, at 3.

[181] *Douglas Timber Operators, Inc. v. Salazar*, 774 F. Supp. 2d 245, 257–58 (D.D.C. 2011).

[182] *Id.* at 258.

[183] *Id.*

[184] *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1910 (2020).

in the BLM's approved RMPs."[185] Given this fact, BLM must explain why it repeats the fiction that no BLM action—except a new land use plan—can remedy the injunction. BLM's position in effect rescinds the 2019 plans, the 2020 SEIS discussing issues raised by the district court's ruling, and the 2021 ROD confirming adoption of the 2019 plans.

The County asks BLM to explain in the FEIS what authority it relies on to ignore its last lawful ROD issued in 2021 without completing a new process, why it is pursuing a new planning effort instead of seeking legal resolution of the 2019 injunction, and how the no action alternative can be the 2019 RMPA which BLM is not currently implementing: this is a crucial aspect of the purpose and need for the DEIS/RMPA.[186]

REQUESTED CHANGE: Implement the 2019 plans under the 2021 ROD. At a minimum, BLM must explain in the FEIS/RMPA why it is not implementing the 2019 plans in light of the 2021 ROD, and must explain why it has not informed the court that although it has unilaterally rescinded that ROD without proper process and sought dismissal of the claims or at least confirmation that the injunction issued in *Western Watersheds Project v. Schneider* is no longer valid. These decisions, in effect, perform an illegal rescission of the 2019 plans, the 2020 SEIS, and the 2021 ROD.

IX. The DEIS/RMPA does not justify this new RMPA as appropriate or necessary; particularly, it does not explain how the RMPA—coming just five years after the 2019 RMPAs—is justified by new science.

A. The RMPA does not cite to new science, developed since the 2019 RMPA that renders the amendment process appropriate.

FLPMA states that BLM "shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, *when appropriate*, revise land use plans which provide by tracts or areas for the use of the public lands."[187] "An amendment shall be initiated by the need to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances or a proposed action that may result in a change in the scope of resource uses or a change in the terms, conditions and decisions of the approved plan."[188] As relevant here, BLM's Land Use Planning Handbook states that "[p]lan amendments are most often prompted by the need to consider significant new information from resource assessments, monitoring, or scientific studies that change land use plan decisions."[189] In accord with FLPMA, the amendment must be appropriate; indeed, a State Director "may terminate an ongoing plan

[185] DEIS at ES-4. But because BLM is not implementing the 2019 RMPs it is a fatal flaw to use this as the baseline or the no action alternative which must reflect current existing conditions. The current condition is that despite its 2021 ROD, BLM is ignoring that decision and implementing the 2015 RMPA.

[186] *See* 40 CFR § 1502.13 (an EIS must include a purpose and need statement that "briefly specif[ies] the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action").

[187] 43 U.S.C. § 1712(a) (emphasis added).

[188] 43 C.F.R. § 1610.5-5.

[189] BLM, Land Use Planning Handbook H-1601-1 at 45.

amendment at any point if the Field Manager provides documentation that the amendment is no longer necessary or appropriate."[190]

BLM has now amended RMPs for ten western states three times during the past ten years: in 2015, 2019, and 2024. This pattern of conducting a west-wide amendment of RMPs involves massive and repeated expenditure of resources and time by both BLM and coordinating agencies. BLM acknowledges that preparation of an amendment may be onerous: "In reaching a decision to amend a land use plan, the BLM must not only consider the resource, but also other workload priorities, budgetary constraints, and staff capabilities."[191] As the Sixth Circuit has observed of the Forest Service's analogous land use planning process, "[d]eveloping a [land use] plan is a formidable process."[192] In this case, the County has been asked to participate in GRSG RMPA nearly constantly from 2015 through 2024. In light of this expenditure of resources to prepare the 2024 RMPA/DEIS, it is shocking that the DEIS/RMPA does not make a strong showing that a new GRSG land use plan is appropriate, much less necessary.

In the scoping process, BLM repeatedly stated that the RMPA was needed to respond to litigation and new science.[193] Litigation is not a reason to amend the RMPs: as we explain above, BLM complied with a court order requiring it to conduct a supplemental analysis of its 2019 plans, and those plans should currently be operative. Rather, this planning process appears to be an effort to merely justify its change in policy from its 2021 ROD with the change in administration and without any reasoned explanation.

Nor does BLM adequately explain how new science, which has emerged since the 2019 RMPs or the 2021 ROD, makes the RMPA appropriate. BLM devotes just one paragraph in the DEIS/RMPA to "New GRSG Science."[194] It does not explain here, or elsewhere in the DEIS/RMPA, why new studies that have emerged since the 2019 planning effort—or, even, the 2015 planning effort—make the current RMPA necessary. Indeed, the Introduction to the DEIS, which explains the purpose and need for the DEIS and hence for the RMPA, BLM repeatedly refers to data developed before 2019.[195]

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[190] *Id.* at 46.

[191] *Id.* at 45.

[192] *Meister v. Dep't of Agric.*, 623 F.3d 363, 368 (6th Cir. 2010).

[193] *See*, *e.g.*, BLM, Transcript of Virtual Public Meeting for the Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement, at 15:48–17:36 (Apr. 9, 2024) ("So what is this new science of which I speak? There [were] a lot of publications" regarding genetic mapping, models of breeding habits, changes in abundance numbers, and climate change impacts.); BLM, Transcript of 2022 Greater Sage-grouse Planning Virtual Public Scoping Meeting, at 09:43–10:06 (Jan. 11, 2022) ("[O]ur 2022 effort is looking at [litigation challenging the 2015 and 2019 plans], but it also is recognizing . . . that we have potential inconsistencies in our 2000, in our previous efforts with the new science and also recognition of rapid changes affecting the BLM's ability to manage public lands, including the effects of climate change.").

[194] DEIS at 1-4.

[195] One notable exception is an annual USGS analyses of GRSG population. But this, by definition, changes each year, and BLM does not suggest—nor does the County—that annual RMPA development is encouraged or feasible.

Further, the DEIS includes information indicating that the 2015 plans, which BLM is currently implementing, are succeeding: BLM's 2015–2020 GRSG Monitoring Report found that, during that five-year period, the percent of anthropogenic disturbance in PHMA was less than one percent, below the threshold where GRSG abandon leks.[196]

REQUESTED CHANGE: As we indicated in our cooperating agency comments, the DEIS/RMPA does not, but must, disclose (1) whether, and the extent to which, the 2015 and 2019 plan amendments are no longer consistent with the science or habitat goals; (2) what is the primary cause of the inconsistency; and (3) how the new planning effort will address those shortcomings.

X. The County, as a cooperating agency, has not had a meaningful opportunity to engage in the land use planning and the NEPA process.

A. BLM did not provide adequate opportunity for the County to engage as a cooperating agency.

Throughout the development of an environmental document, BLM must:

> collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise. Cooperating agencies may, by agreement with the lead bureau, help to do the following:
>
> (a) Identify issues to be addressed;
> (b) Arrange for the collection and/or assembly of necessary resource, environmental, social, economic, and institutional data;
> (c) Analyze data;
> (d) Develop alternatives;
> (e) Evaluate alternatives and estimate the effects of implementing each alternative; and
> (f) Carry out any other task necessary for the development of the environmental analysis and documentation.[197]

For the GRSG RMPA DEIS, BLM acted contrary to regulatory command in giving the County minimal opportunity to engage with BLM regarding the DEIS through its unique role as a cooperating agency. BLM's derogation of its responsibility to engage with cooperating agencies includes the following:

1. BLM made only an incomplete version of Chapter 2 accessible to cooperating agencies before releasing to cooperating agencies a full version of the ADEIS. That BLM did not make any other standalone draft chapters—for example, the Affected Environment or Environmental Consequences chapters—available to cooperating agencies significantly hampered the County's ability to help BLM identify issues, develop alternatives, and

[196] GRSG Plan Implementation Rangewide Monitoring Report for 2015–2020 at 49.

[197] 43 C.F.R. § 46.230; *see also id.* § 46.230; *id.* § 1501.6.

evaluate alternatives and their effects. This was exacerbated by the landscape-level scale of the plan.

a. Foe example, the alternatives table that is the bulk of Chapter 2 is difficult to understand because it synthesizes management plans for 69 million acres in ten states.

2. BLM made the full administrative DEIS (ADEIS) available for review by cooperating agencies during a two-week period that coincided with the Christmas holidays. Thus, although the County has technically been able to aid BLM in preparing the ADEIS before its release to the public, in practice the County had two weeks to read more than 2,300 pages of DEIS text and appendices. This does not evince respect for the County as a cooperating agency, and it did not permit the County to fully participate as a cooperating agency particularly given the expansive nature of the landscape-level plan.

3. Though BLM gave counties access to USGS HMA maps, these maps were incomplete at the point they were provided to the cooperating agencies. Because BLM only provided updated maps at the end of May, the County has not yet been able to reconvene the Working Group to assess any updates to habitat designations in these maps. We appreciate BLM's downward revision of acreage designated as HMA in these maps, although we note that because of the area-wide (Nevada and California) scale at which the updated maps are drawn, it is difficult to tell from them what precisely has changed for HMA in the County.

4. BLM did not incorporate studies and data the County provided into the DEIS.

5. BLM did not incorporate cooperating agency comments. We describe below BLM's response (or lack thereof) to our cooperating agency comments on the draft version of Chapter 2 and the ADEIS. Of more than 90 comments seeking changes to the ADEIS, BLM made satisfactory revisions to the DEIS in response to *just nine* of these comments. Most of these suggested relatively minor wording changes.

   We note below in summary form our comments on the ADEIS and whether they are addressed in the DEIS.

B. BLM failed to address the bulk of the County's cooperating agency comments. Insofar as those comments were not addressed in the ADEIS, BLM should address them in the DEIS and the County requests so.

Comment #	Alternative	Issue	Eureka County Cooperating Agency Comments on Chapter 2	DEIS
1.	4 and 5	Adaptive Management	Regarding limitations imposed when an adaptive management threshold is exceeded,	No change. *See* DEIS at 2-124.

			suggested that BLM should not tie the determination whether to exempt an activity from limitations to whether the activity is scheduled within 60 days of when a threshold is met and identified.	
2.	4 and 5	Adaptive Management	Suggested that BLM should include an adaptive management threshold limitation exception for renewal or permitting of any activity that is necessary for public health and safety, maintenance of existing crucial infrastructure, and required administrative functions that serve a necessary public purpose.	Partial change. On p. 2-126, BLM includes an exception for "[a]ctivities essential for human health and safety *in a current or likely catastrophic event (e.g., repair of dams, emergency vehicle access)* [emphasis added]." This does not fully address the County's concern. As noted, because Eureka County consists largely of public land, the absence of this exception significantly hampers the County's ability to perform its governmental functions.
3.	3, 4, 5, 6	Disturbance Cap	Noting that some agriculture can benefit sage grouse, asked BLM to better define what type of agriculture is intended to apply as part of the disturbance cap calculation.	In one location in the DEIS it alludes that in Nevada BLM may not include agriculture as part of the disturbance cap calculation for these alternatives but the language is not clear.
4.	3, 4, 5, 6	Disturbance Cap	Asked BLM to change its requirement that the disturbance cap include disturbance on non-BLM managed lands and,	No change. *See* DEIS at 2-32. Instead, BLM states that its inclusion of activity on non-BLM land is

			because this factor is included in the disturbance cap, preclude use of BLM lands on this basis.	"consistent with the BLM's responsibility to consider cumulative impacts when making decisions for activities on public lands." We further address this issue above.
5.	2	Disturbance Cap, Consistency Requirement; FLPMA/NEPA Insufficiency	Among other changes, the County asked BLM to include in its list of Nevada/California-specific exceptions to the disturbance cap the italicized text: "The proposed activity is a renewal or reauthorization of existing infrastructure in previously disturbed sites and would not result in direct, indirect, or cumulative impacts *including allowance of mitigation to provide equivalent number of functional habitat acres through the Nevada CCS [Conservation Credit System]*" and "[t]he proposed activity is determined to be a routine administrative function…and will have no adverse impacts on GRSG and its habitat *including allowance of mitigation to provide equivalent number of functional habitat acres through the Nevada CCS*."	No change. *See* DEIS at 2-35.

6.	3, 4, 5, 6	Habitat Objectives, Best Available Science; FLPMA/NEPA Insufficiency	The County asked BLM to include the italicized text in its Management Action SSS [XI]: "Assess the suitability of GRSG habitat, *including incorporation of habitat mapping ground-truthing*, at HAF mid- and fine-scales [Levels 2 and 3] . . . based on the methods in the HAF."	No change. *See* DEIS at 2-27.
7.	3, 4, 5, 6	Habitat Objectives, Best Available Science; FLPMA/NEPA Insufficiency	The County asked BLM to include the italicized text in its Management Action SSS [Y1]: "Assess suitability of GRSG habitat, *including incorporation of habitat mapping ground-truthing*, at the HAF site-scale (Level 4) based on" HAF methods.	No change. *See* DEIS at 2-27.
8.		Habitat Objectives, Best Available Science; FLPMA/NEPA Insufficiency	The County asked BLM to include language stating that HMAs will be managed "based on current ecological potential according to the Ecological Site Description (ESD), associated State and Transition Model (STM) and existing ecological state."	No change. *See* DEIS at 2-27. BLM states that management of HMAs will be "accomplished through the combination of RMP land use allocations and management actions and restoration—based on ecological potential, current vegetative condition, and existing seasonal values." But it does not state that ecological potential should be evaluated using certain metrics.
9.	3, 4, 5, 6	Habitat Objectives, Best Available	The County asked BLM to include the italicized text: "ESDs shall be	No change. *See* DEIS at 2-27. BLM states that "[u]pdates to

		Science; FLPMA/NEPA Insufficiency	locally developed *and based on current ecological potential according to the ESD, associated State and Transition Model (STM) and existing ecological state*; "[u]sing multi-scale evaluations considers the entire suite of conditions contributing to high quality habitat, the success of past conservation actions, and prioritizing future land uses and conservation actions, *all based on current ecological potential according to the Ecological Site Description (ESD), associated State and Transition Model (STM) and existing ecological state*."	seasonal habitat indicators and ESDs will be developed locally and coordinated with partners, but it does not state that ESD determinations should be predicated on ecological potential based on STM nor that ecological potential should be evaluated using specific metrics.
10.	3, 4, 5, 6	Habitat Objectives, Best Available Science; FLPMA/NEPA Insufficiency	The County asked BLM to specifically include the 2013 Interagency Ecological Site Handbook for Rangelands and ESD/STM foundational literature, including Stringham et al. 2016.	No change. See discussion above. BLM does not include these materials in the Habitat Objectives section nor as part of its Habitat Indicators material, in Appendix 8 to the DEIS. It mentions Stringham et al. 2016 just once in the DEIS, in a discussion of fire and vegetation management objectives on p. 2-169. It never mentions the Interagency

				Handbook, BLM Policy Handbook H-1734.
11.	All	Consistency Requirement; FLPMA/NEPA Insufficiency	The County asked BLM to refer to the Sagebrush Ecosystem Council and Program, the designated authority under Nevada Law for GRSG mitigation and sagebrush ecosystems, in addition to its reference to mitigation standards imposed by a state wildlife management agency. The County also asked BLM to refer to coordination with "any other local agency with management expertise or authority, including conservation districts" in developing appropriate mitigation.	No change. The DEIS does not mention the Sagebrush Ecosystem Council nor make the reference to coordination that the County sought.

Comment #	**Alternative**	**Issue**	**Eureka County Cooperating Agency Comments on ADEIS**	**DEIS**
1.	3, 4, 5, 6	Landscape-scale Planning by Washington Office; FLPMA Insufficiency	BLM regulations and FLPMA do not permit the Washington Office to develop landscape-scale plans; planning is presumptively conducted at the field office level	No change.
2.	All	Style	Must change "data is" to "data are"	The County appreciates BLM's attention to this issue.
3.	All	Cooperating Agency Participation; FLPMA/NEPA Insufficiency	BLM did not appropriately engage cooperating agencies in assessing new alternatives proposed by the 2024 ADEIS/ARMPA	No change. As noted here, the DEIS does not adequately incorporate input from cooperating agencies.

4.	All	Style; NEPA Insufficiency	Poor writing and organization	No change. As noted, the DEIS is poorly organized and, especially regarding the sprawling table presenting alternatives, does not facilitate understanding of BLM's proposed management decisions.
5.	3, 4, 5, 6	HMA/ACEC Maps are Inadequate; FLPMA/NEPA Insufficiency	The ADEIS relies on HMA mapping that is not properly updated or provided in resolution that makes analysis proper	BLM has provided the County with updated mapping from USGS, but the maps still display a statewide scale that is difficult to properly analyze, especially for the public. Though the County requested shape files, BLM did not provide more granular mapping data.
6.	3, 4, 5, 6	Consistency requirements; FLPMA/NEPA Insufficiency	Consistency with state/local plans and explanation of inconsistencies	No change. See discussion above.
7.	Introduction	Style	Replace "healthy sagebrush communities" with "functioning sagebrush ecosystems"	Change made.
8.	Introduction	Local government participation	Comment suggesting that BLM recognize the role of local agencies in doing proactive work to conserve GRSG habitat	Language removed from DEIS, but the County reiterates that BLM should recognize this role in the FEIS/RMPA
9.	Introduction	Accuracy	ADEIS inaccurately characterized District of Nevada decision holding that 2015 ARMPAs violated NEPA	The County thanks BLM for making the requested change.

			by focusing only on the part of the holding addressing sagebrush focal areas (SFAs); the holding (which addressed claims Eureka County raised) issues with other habitat designations.	
10.	Introduction	Statement of Consistency Requirement; FLPMA Insufficiency	Suggested revision to make clear that consistency requirement was a mandate.	The language in DEIS has somewhat changed, but the County reiterates that consistency is a mandate.
11.	Introduction	Accuracy	Suggested revising "quantity and quality of available habitat" to read "availability of functional habitat. Available functional habitat, which is the key question, does not equal quantity and quality: one acre of a limiting habitat like late brood rearing habitat is not the same as one acre of Wyoming sagebrush transitional habitat.	No change.
12.	Introduction	Accuracy	The DEIS should not state that GRSG habitat is lost as a result of public land use when the greatest driver of loss is wildfire.	No meaningful change. This language does not appear in the DEIS, but the DEIS's emphasis on anthropogenic disturbance (i.e., public land use) belies the science: 87% of GRSG habitat loss in the Great Basin is due to wildfire.

13.	Introduction	Purpose and Need	Asked BLM to add that among its goals for the RMPA is to "provide regulatory certainty for the regulated community and permitted land uses," a goal missing during a decade of revisions and re-revisions of GRSG habitat conservation plans	No change.
14.	Introduction	HMA Mapping	Revise to include criteria-based flexibility for application of major land use allocations in HMAs for verified non-habitat within the habitat management areas	No change.
15.	Introduction	Management Actions Within HMA	Suggested revision to clarify that because not every acre of mapped HMA is habitat, this also means that management actions, including allocations, may not apply to some (but not always all) of the areas within these HMAs that are truly not habitat and where implementing a rigid allocation or management action would noy provide any real benefit to GRSG (while also considering implementation of compensatory mitigation)	No change.
16.	Introduction	Statement of Consistency Requirement;	Suggested clarifying that consistency	BLM has changed this language.

		FLPMA Insufficiency	requirement is a mandate	
17.	Introduction	Adjustment of HMAs to Reflect Science	Comment regarding insufficiency of language in the ADEIS addressing the issue of adapting habitat management areas over time to reflect the best available science: the County has experienced trying to adjust allocations or management decisions based on ground-truthing where everybody has agreed that an area is not GRSG habitat; hard-and-fast allocations have not been able to be adjusted	No change.
18.	Introduction	Consistency Requirement, Discussion of Inconsistencies; FLPMA/NEPA Insufficiency	DEIS should be clear that maximal consistency is a requirement; the DEIS should also rectify the absence of discussion of inconsistencies between the RMPA and local land use plans. Discussion of inconsistencies is required by NEPA.	No change.
19.	Introduction	Habitat Objectives	Suggested adding language stating that habitat objectives are "specific, measurable desired conditions or outcomes that are achievable, based on current ecological potential given the current ecological state of any given ecological site,	No change.

			intended to meet goals"	
20.	3	Consistency, Purpose and Need; FLPMA/NEPA Insufficiency	Alternative 3 should be removed: it is not responsive to the purpose and need statement, and it is inconsistent with the State Plan	No change.
21.	4, 5	Description of Alternatives; NEPA Insufficiency	DEIS should make it easier to differentiate between Alternatives 4 and 5; the current description does not make it easy for the reader to distinguish the two	BLM has made some changes to clarify differences but the differences are still somewhat difficult to tease out given the organization and formatting of the DEIS.
22.	3	Consistency, Purpose and Need; FLPMA/NEPA Insufficiency	Alternative 6 should be removed: it is not responsive to the purpose and need statement, and it is inconsistent with the State Plan	No change.
23.	All	Consistency Requirement; FLPMA Insufficiency	No alternative is maximally consistent with state and local land use and GRSG plans, though Alternative 2 is the most consistent. Additionally, 43 C.F.R. § 1610.4-7 requires BLM to develop its preferred "in collaboration with" cooperating agencies. BLM must develop a preferred alternative that is consistent with state and local land use plans.	No change.
24.	All	Objectives	Suggested language to include that RMPA goals can only be	No change

			achieved in coordination with local governments as well as with state wildlife agencies	
25.	3, 4, 5, 6	HMA Mapping/Review	BLM must revise language in the ADEIS to make clear that HMA designations have not been developed in coordination with state and local agencies	No change.
26.	3, 4, 5, 6	HMA Mapping	BLM should add language clarifying that the HMA products are modeled and meant for general, overall management and subject to local verification and ground truthing to refine project level decisions.	No meaningful change, though we note BLM has clarified in the text that HMA maps are based on modeling.
27.	2, 3, 4, 5	HMA Mapping	Figures for Alternatives 2–5 are based on an incomplete model and map not adopted by the State.	Though BLM updated its model in May 2024, significant errors in HMA mapping remain.
28.	All	Alternatives Table Incoherence; NEPA Inconsistency	The Alternatives Table does not provide any value as it is confusing and counterintuitive: if we have a hard time using it, the public that has not been engaged as we have, as a cooperating agency, will definitely not understand it.	No change.
29.	3, 4, 5, 6	HMA Mapping and Accuracy	Must develop a process for streamlined ground-truthing HMAs.	No change.

30.	4, 5	Consistency Requirement; FLPMA Insufficiency	The ADEIS does not include language, as it should, referencing adoption and utilization of Nevada's CCS and HQT; BLM should clarify any difference between the terms "compensate" and "mitigate"; BLM should clarify the term "no net loss" and should adopt the State's definition of "net conservation gain."	No change.
31.	3, 4, 5, 6	HAF	Use of the HAF is not based on best available science.	No change.
32.	3, 4, 5, 6	Disturbance Cap	The County does not support a disturbance cap; it is not necessary or based on best available science.	No change.
33.	Preferred Alternative	Preferred Alternative	The preferred alternative should be consistent with the Nevada Counties preferred alternative.	No change.
34.	All	Raven Predation	Discussion of raven predation should point out that limited take is the main issue in preventing predation.	No change.
35.	All	Livestock Grazing	Change "livestock grazing can be a management tool to aid in the management or maintenance of vegetation communities within GRSG habitat" to "livestock grazing is a management tool."	No change.

36.	All	Livestock Grazing	Detailed comment on evidence supporting the view that livestock grazing is a key management tool; BLM should incorporate this evidence.	No change.
37.	All	Livestock Grazing	Water development for livestock grazing can improve GRSG habitat, and range improvements permit proper livestock grazing. BLM should permit these important aspects of livestock grazing in all alternatives.	No change
38.	3, 4, 5, 6	HAF	Detailed comment explaining why use of the HAF is not based on best available science.	No change.
39.	All	Livestock Grazing	Voluntary relinquishment of grazing rights should not be a suggested management strategy; livestock grazing is a key management tool.	No change.
40.	All	Wild Horse and Burro	The provisions and management decisions related to WHB in the previous (2015 and 2019) processes have not been adhered to. The EIS should address this issue and be frank and propose real, actionable solutions to the WHB issue that were not identified in the previous EIS.	No change.
41.	3, 6	ACECs	The County opposes any ACEC designation;	No change.

			because BLM believes it must consider an ACEC alternative, it must revise the discussion to show why the areas proposed for ACEC designation meet the relevance, importance, and special management requirements.	
42.	3, 4, 5, 6	Adaptive Management	The ADEIS's adaptive management framework is not consistent with BLM's own 2009 guidance on adaptive management; BLM should adopt the State's adaptive management process.	No change.
43.	3, 4, 5, 6	Adaptive Management	BLM must coordinate with other federal, state, and local agencies in pursuing adaptive management; it should clarify this in the DEIS.	No change.
44.	3, 4, 5, 6	Land Disposal	Land disposal should be permitted where compensatory mitigation offsets any net impacts.	No change.
45.	3, 4, 5, 6	Lek Buffer	The lek buffer requirement is not based on best available science and should be locally adjustable; detailed comment on lek buffer science.	No change.
46.	All	Consistency Requirement	Nevada's GRSG plan is more than a land use plan; it has been adopted by state statute. BLM must	No change.

			mention and make the ADEIS consistent with the State Plan.	
47.	All	Ecological Site Descriptions	Please add a section discussing ESDs and their associated STMs/DRGs as tools to evaluate habitat condition, trends, and restoration pathways in addition to current ecological potential. GRSG conservation means managing for the best possible which in some ESDs may not be in alignment with the HAF. The HAF outlines desired habitat but not necessarily what can be achieved based on the ecological status.	No change.
48.	All	Rights of Way	The DEIS should add that most existing roads are county roads and public roads under Nevada Revised Statutes chapter 403 and 405, respectively. Most, if not all, of these roads have existed decades before FLPMA was passed and require no authorization from BLM and are “valid existing rights.”	No change.
49.	All	Socioeconomic Analysis	The lack of adequate socioeconomic analysis from the 2015 and 2019 RMPAs jeopardizes this process and all decisions in the future. BLM must complete an	No change.

			adequate socioeconomic analysis, including relying on the Nevada Economic Assessment Project, which is absent from the current ADEIS.	
50.	All	Socioeconomic Analysis	An effort to highlight the other socioeconomic factors of livestock grazing, in addition to BLM receipts, must be included. Eureka County suggested adding a detailed example from the County's experience and based on Nevada specific data and studies.	No change.
51.	All	Affected Environment, Water	BLM should make clear that water *quality* on public lands is regulated under federal law. Add a statement that water rights and water quantity are regulated by the state.	The County appreciates BLM's attention to water quality issue, and the change made. BLM did not add a statement regarding water quantity regulation by the state.
52.	All	Affected Environment, Water	Clarify that BLM does not authorize use of water, BLM authorizes infrastructure, ROWs, etc. for water to be put to use. Further, BLM has no authority over use of vested water rights or pre-FLPMA associated ditches and conveyances (RS 2339).	No directly responsive change.
53.	All	Livestock Grazing	DEIS must recognize of grazing (including, for	No directly responsive change.

			example, mob grazing) as a tool to achieve habitat objectives.	
54.	All	Livestock Grazing, Best Available Science	BLM should clarify that segregating livestock from around leks will do nothing to reduce raven predation; instead, BLM should address the subsidies related to livestock production around leks.	No directly responsive change.
55.	All	Consistency Requirement; FLPMA/NEPA Insufficiency	The ADEIS does not identify or discuss inconsistencies with Eureka County's or the State of Nevada's plans, policies, programs. BLM must include such discussion, including specific reference to NEPA regulations and guidance requiring discussion of inconsistencies, specifically 40 C.F.R. § 1502.16(a)(5) and 1506.2(d) and the Forty Asked Questions. The County had already provided BLM a large document on previous RMPA processes documenting each inconsistency; this should be used in the DEIS.	No change.
56.	All	Cooperating Agencies	List relevant Nevada counties, including Eureka County, as cooperating agencies	The County appreciates the change.
57.	All	HMA Mapping	The HMA maps are meaningless at this	No change, even in mapping produced as

			scale. It is impossible for us to see the granular details needed to weigh potential effects on lands, people, and resources.	a result of May 2024 model update.
58.	All	HMA Mapping	If BLM is going to offer various mapping alternatives, then it needs to provide a narrative description somewhere in Appendix 1 that describes how the mapping for each alternative was derived.	No change.
59.	1	HMA Mapping	BLM should add a note regarding Map 2.1 (for Alternative 1) indicating that these management categories (excluding SFAs) for Nevada were adopted by the State in 2015. At this time, this is the only complete map that has actually been approved by the State of Nevada.	No change.
60.	3, 6	ACEC Mapping	The ACEC maps make it impossible to get a reasonable geographic handle of where the boundaries are proposed, and this map doesn't match with the descriptions or number systems used in the ACEC Appendix. A more specific full-page map should be provided for each ACEC, including	No change.

			the underlying State-approved HMAs. Boundaries also need to be included in a publicly available web viewer.	
61.	All	Management Actions	The Appendix 2 table showing allocations in 2015, 2019, and 2023/24 is helpful and should be provided in the text of the DEIS. A similar table should be developed for all proposed Alternatives.	No change.
62.	All	HMA Mapping, Best Available Science; FLPMA/NEPA Insufficiency	Updated maps must be finished by USGS, reviewed by cooperating agencies and adopted by the State of Nevada before they are incorporated by the BLM. Publishing an incomplete model doesn't meet the standard of “best available science” nor comport with NEPA.	No meaningful change; BLM has updated maps and provided them to the County, but all of the different maps for various alternatives have not been adopted by the Sagebrush Ecosystem Council.
63.	All	HMA Mapping	The State of Nevada and Sagebrush Ecosystem Council must adopt HMA maps. BLM should add that in 2015 the USGS Model was trimmed to state-defined Population Management Area Boundaries. Finally, a disclaimer needs to be added that makes clear that the Nevada maps are based on habitat modeling. The maps are rife with	No change. We note that the SEC adopted the new USGS map at their last meeting. But, as we previously argued, having the same map without the same underlying process for how the maps are to be used is a severe misalignment.

			areas mapped as habitat that are entirely implausible.	
64.	3, 6	ACEC Designation	Reiterate that the County does not support ACECs and that the evidence BLM provides does not justify designation of ACECs.	The County retains this position.
65.	3, 6	ACEC Designation TWO COMMENTS (numbered 87 and 79 in our cooperating agency comments)	While the proposed ACECs may be relevant because they contain Sage-grouse habitat, the BLM hasn't shown that these areas are any more “relevant” or critical to Sage-grouse Conservation that other areas of mapped priority habitat.	No change.
66.	3, 6	ACEC Designation	BLM should note that no State or local governments nominated ACECs, despite the fact that states have management authority over GRSG.	No change.
67.	3, 6	ACEC Designation Process TWO COMMENTS (numbered 81 and 82 in our cooperating agency comments)	BLM conducted a top-down preliminary evaluation of ACECS reliant on desktop analysis of models. This is inadequate. Further, haring ACEC boundaries after they are proposed does not constitute cooperation with cooperating agencies like the County.	No change.
68.	3, 6	ACEC Designation	BLM needs to do a better job of disclosing the potential impacts and existing	No change.

			authorizations that may impacted by the ACECs.	
69.	All	National Technical Team and Conservation Objectives Team Reports	Eureka County supports efforts to include rationale around why the RMPA does not require strict adherence to the NTT and COT reports; detailed comment discussing those reports and reasons that they have been proven inaccurate.	Appendix 6 addresses the reports and why they were not included as specific alternatives in the DEIS but does not clearly explain why the RMPA does not require strict adherence to them.
70.	All	HAF	Detailed comment discussing why reliance on HAF monitoring is not best available science.	No change: BLM still relies on the HAF.
71.	All	Habitat Indicators Table	Detailed comment suggesting that Table 8-1.D, habitat indicators for Nevada, is not grounded in ecological reality for many ESDs. Especially, the "greater than 7% residual and live perennial grass cover where shrub cover is greater than 20%" indicator is inaccurate, for reasons we explained in detail. And the current levels of PJ suggested by the Table would have severe negative impacts on GRSG habitat.	No change.
72.	All	Grazing BMPs	BLM should revise the RMPA to allow supplement use for targeted grazing to be placed, in some	No change.

			circumstances, near water sources or in intact sagebrush stand. It should caveat its prohibitions on grazing near water sources or intact sagebrush stand with the statement that it may be permitted where effective control to avoid detrimental impairment of any riparian area or sage grouse habitats can be ensured.	
73.	All	Grazing BMPs	Suggested adding that treated areas should be "rested from livestock grazing until resource monitoring data verifies the treatment objectives are being met or ecological conditions exist which preclude treatment objectives from being met regardless of grazing."	Partial change. BLM added that "areas that have received vegetation treatments should be rested from livestock grazing until resource monitoring data verifies the treatment objectives specific to the purposes of the treatment are being met and an appropriate grazing regime has been developed." But there is no clarity how grazing could be returned if treatment objectives are not able to be met regardless of grazing deferment, which was the primary context of our comment.
74.	All	Water-related Design Features	For all water-related design features, please insert language that all	No change.

			features will accord with Nevada Water Law and honoring existing water rights.	
75.	All	Drought Response	Add Vegetation Drought Response Index (VegDRI).	VegDRI was added to Appendix 15. The County thanks BLM for this addition.
76.	All	Nevada-specific BMPs	BLM should not use the HAF to develop BMPs.	No change.

REQUESTED CHANGE: BLM must develop an intelligible and complete FEIS/RMPA including full consideration of all previous and current cooperating agency comments and public comment. BLM must provide reasonable timelines that give cooperating agencies time to fully read, absorb, and develop comments on an ADEIS. BLM must record in Chapter 5, on Consultation and Coordination, the general cooperating agency complaint that DEIS comment timeframes were too short for meaningful engagement as well as BLM's response.

XI. The DEIS/RMPA makes public participation impracticable.

FLPMA requires that BLM ensure the "views of the general public" and "third-party participation" are adequately incorporated into the land planning process.[198] This means that "[t]he public shall be provided opportunities to meaningfully participate in and comment on the preparation of plans, amendments and related guidance and be given early notice of planning activities. Public involvement in the resource management planning process shall conform to the requirements of the National Environmental Policy Act and associated implementing regulations."[199]

A. The convoluted Alternatives Chapter precludes meaningful analysis of alternatives.

An EIS must "[d]iscuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits."[200] "If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and publish a supplemental draft of the appropriate portion."[201] The GRSG RMPA DEIS precludes meaningful analysis of alternatives. We observed in our cooperating agency comments that, in our experience, the DEIS/RMPA is unique among NEPA documents. The overwhelming degree of complexity of the alternatives, the chaotic organization of the document, the confusion on which habitat maps are to be used for which alternatives (and the scale in which the maps were provided), and the unprecedented

[198] 43 U.S.C. § 1701(a)(5); *see also Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 556 (9th Cir. 2006) (the views of public must be adequately incorporated in the NEPA process).

[199] 43 C.F.R. § 1610.2(a).

[200] 40 CFR § 1502.14(b).

[201] *Id.* § 1502.9(b).

number of appendices are confounding and overwhelming even to the most experienced reader of NEPA documents. This complaint was universally voiced among all cooperating agencies and given the expertise cooperating agencies bring to bear in reading NEPA documents, if such agencies found the DEIS difficult to read interested members of the public have no hope of understanding it, let alone making well-informed comments on it."[202]

Unlike the 2015 and 2019 RMPAs, which created one RMPA for each of the 10 states, in this planning effort the BLM is attempting to formulate four new planning alternatives (3–6) that, if adopted, would apply equally to all RMPs in all 10 states—a west-wide one-size-fits-all approach. Given the extreme ecological variations across the GRSG range, however, the BLM was faced with the problem of carving out countless state-specific exceptions in the many instances where singular planning directives would have been non-sensical. In the DEIS/RMPA the BLM is trying to have it both ways, i.e. one-size-fits-all GRSG RMPA alternatives that tack on state-specific management directives. BLM does not adequately explain that Alternatives 1 and 2 extrapolate from ten different, state-specific RMPAs, while Alts. 3–6 will largely amend all district plans across all ten states in the same way, with a few "state-specific" provisions tacked on. The alternatives are (mostly) represented in a set of tables with additional state-specific provisions listed in Section 2.6.

The result is utter confusion. The 100-plus page alternative table in Section 2.5 is riddled with state-specific variations and exceptions in addition to the separate "state-specific circumstances" section in 2.6. A reviewer who wishes to know what Alternatives 1–6 look like for Nevada—a simple proposition when looking at either the 2015 or 2019 Nevada RMPAs—must cobble together (the work of hours) his own version of the alternative tables using the raw materials that are scattered across the tables in Sections 2.4, 2.6.3, and 2.7. This is entirely unacceptable and inconsistent with NEPA requirements; it is the responsibility of the lead agency to present the alternatives in a manner that is readily understandable. The fact that all relevant information may be "somewhere" in the DEIS does not satisfy this requirement. The DEIS is piecemealed to the point of being entirely unintelligible to the reviewer.

B. The DEIS does not use "plain language" or "clear prose" and is not well-edited.

CEQ's NEPA regulations ask agencies to "employ writers of clear prose or editors to write, review, or edit statements."[203] Further, the Plain Language Act provides that all government documents should be "clear, concise, well-organized, and follow[] other best practices appropriate to the subject or field and intended audience."[204] We would normally not comment on style errors at length, but we addressed grammatical errors in our cooperating agency comments on a draft of Chapter 2 and in our cooperating agency comments on the administrative DEIS that the writing is often unnecessarily complicated, poorly phrased, and contains innumerable grammatical and typographic errors. The number of errors remaining in the document makes the DEIS difficult to read and understand. For example, at 2-192, BLM uses "data is," [rather than "data are"] which

[202] *Id.*

[203] 40 CFR § 1502.8.

[204] 5 U.S.C. § 105.

in previous comments Eureka County has counseled is ungrammatical. Misplaced commas, quotation marks, and words are not uncommon in the text, and some sentences clearly have not been proofread. For example, the DEIS states that "[u]nder Alternative 2 Nevada would exception criteria to the mineral material disposal closure in PHMA."[205] For clarity, the FEIS should address these issues.

REQUESTED CHANGE: BLM should develop state-specific alternatives tables for ease of comparison and, indeed, should develop state-specific RMPAs, as FLPMA demands.

XII. CONCLUSION

Following review, our primary concern is that the current plan amendment is an improper planning action because it is not being developed at the Field Office level with State Director oversight, as required by the BLM's planning regulations. As such, this planning action should be discontinued and GRSG conservation planning taken up by Field Offices with State Office oversight. Impropriety notwithstanding, as a NEPA document the DEIS/RMPA is profoundly insufficient and will have to be supplemented.

Thank you for considering these important issues. If you have any questions, please do not hesitate to contact Eureka County's point of contact, Natural Resources Manager, Jake Tibbitts at JTibbitts@EurekaCountyNV.gov or (775) 237-6010.

Respectfully,

Rich McKay, Chairman
Eureka County Board of Commissioners

[205] DEIS at 4-114.

June 10, 2024

Greater Sage-grouse Land Use Plan Amendments EIS Comments
ATTN: HQ GRSG RMPA
U.S. Bureau of Land Management - Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101

Submitted via Federal eRulemaking Portal
Portal: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning (Federal Register/Vol.89, No. 52/Friday, March 15, 2024/Notices)

Dear Ms. Pat Deibert:

On behalf of the Hot Springs County Board of Commissioners (County), please accept this letter as comments for the Bureau of Land Management's (BLM) Greater Sage-grouse (GrSG) Draft Resource Management Plan Amendment (DRMPA) and Draft Environmental Impact Statement (DEIS). The management of GrSG continues to be of great importance to us and working with federal agencies to pursue a balance between Sage-grouse conservation, multiple use of public lands, energy development and the protection of private property is critical to the long-term health of our County and the State of Wyoming.

As a member of the Wyoming County Commissioners Association (WCCA), Hot Springs County has been actively engaged in the GrSG RMPA process, today and historically during the 2015 and 2019 plan amendments. In addition, we have participated in the Governor's Executive Order process including the development of Wyoming Executive Order 2015-4 and 2017-2, and most recently the updated Executive Order 2019-3. The County has demonstrated through numerous efforts that we have a vested interest in proactive management of GrSG to prevent a threatened or endangered listing under the Endangered Species Act (ESA).

In Wyoming, counties serve as a legal arm of the state entrusted with carrying out statutory and regulatory goals at the local level. Counties operate at the forefront to ensure our communities are economically vibrant, safe, and healthy places to live and work. Wyoming counties serve as partners and co-regulators of the 18.4 million acres of BLM surface lands and 42.9 million acres of federal mineral estate that fall within our jurisdictional boundaries and uniquely contain varying percentages of federal, state, and private land, which need thoughtful management. Specifically, Hot Springs County lands are comprised of approximately 44% of *federal surface* and 2430 records of mining claims managed by the BLM.

Furthermore, as co-regulators, Hot Springs County has prepared a Natural Resource Management Plan and Land Use Plan to serve as the basis for communicating and coordinating with the federal

government and its agencies on land and natural resource management issues. Wyo. Stat. § 18-5-208(b). Communication, coordination, and collaboration with the BLM is vital, especially where significant BLM land and minerals exists, and management decisions can significantly impact the regulatory framework, customs, culture, and socioeconomics of our counties.

As partners, Counties work diligently to support the work of our federal land managers to overcome shared challenges and achieve mutual goals. Our counties actively participate with Wyoming BLM field offices and the Wyoming State BLM office on National Environmental Policy Act (NEPA) projects, trainings and presentations, and special initiatives. This proposed Plan Amendment is no exception, as Wyoming counties participated as cooperating agencies in BLM meetings and provided administrative draft comments, where allowed.

In response to this DEIS, Hot Springs County submits the following detailed comments for BLM's consideration specific to this plan amendment:

I. General

- State of Wyoming – Hot Springs County endorses, and incorporates by reference, comments submitted by the State of Wyoming.

- Wyoming County Commissioners Association (WCCA) – Hot Springs County endorses, and incorporates by reference, comments submitted by WCCA.

II. Support for the Wyoming GrSG Executive Order 2019-3 (EO) and State Alternative

Hot Springs County has gone on record numerous times, strongly supporting BLM's alignment with the Wyoming EO to the greatest extent possible. Hot Springs County believes the steps taken by the BLM in the past to align with the EO is critical to successful population and habitat management. Further, coordinating and combining resources between the state, local governments and federal agencies ensures the success of long-term management approaches that benefit the species.

The creation of the Sage-grouse Implementation Team (SGIT), an on-going process occurring between a cross section of stakeholders representing a multi-jurisdictional, cross-governmental and citizen-inclusive collaborative working group, focused on developing a satisfactory management strategy to protect GrSG and its habitat. The regulatory framework ultimately developed by SGIT and incorporated into the Wyoming EO resulted in the support of the United States Fish and Wildlife Service (USFWS) as a regulatory mechanism that would in fact protect long-term viability of Sage-grouse habitat and Sage-grouse populations; thereby, avoiding a listing under the ESA.

Wyoming has worked diligently to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. Many of the issues BLM is now readdressing in this latest series of NEPA analysis includes: Priority Habitat

Management Area (PHMA) mapping, habitat objectives, approaches to minimizing surface disturbance in PHMA, effects of livestock grazing, mitigation strategies including compensatory mitigation, mitigation recommendations for fluid mineral development within PHMA and General Habitat Management Area (GHMA), wild horse and burro management, adaptive management prescriptions and strategies for short-and-long term monitoring, which are all addressed in depth by the Wyoming EO.

BLM should continue to join Wyoming in supporting this EO and the regulatory framework as being the most effective for protecting the species and its habitat and allowing for a flexible strategy addressing changing conditions in a timely manner.

To this point, the State of Wyoming submitted a proposed State Alternative to be analyzed in this DEIS, which provided consistency with the EO. BLM failed to incorporate that proposed state alternative in the analysis as stating it was submitted to BLM too late in the process to be included as a stand-alone alternative. The County strongly encourages BLM to include or acknowledge the State's Alternative in the Final EIS with a sufficient explanation as to why it was not addressed in the analysis to date.

III. Cooperating Agency Process

The cooperating agency process was not without disagreement or frustration as our opportunity to engage with the federal agency, as outlined by the Counsel of Environmental Quality's (CEQ) NEPA regulations and was written into our MOUs, was ignored by the BLM. When these conflicts arose, Wyoming counties did everything in our power, and in accordance with our MOUs, to raise concerns expeditiously to resolve issues, as expressed in our candid conversations and frank letters.

While the DRMPA expresses numerous successes for cooperation throughout the process, there were certainly places that could have been improved. We also realize that the BLM is generically referred to, however, it must be clarified that this process was not run by the Wyoming state office but rather BLM Headquarters. This enlarged scale may be partly to blame for process failures during the cooperating agency process.

Unfortunately, Wyoming counties were powerless in directing how the BLM ran its cooperating agency process and meaningful opportunities for participation in the amendment process were far and few between. In an attempt to remedy this problem, Wyoming counties verbally requested improvements and sent numerous letters asking the BLM to improve the cooperating agency process and work in good faith with cooperators.

Our first letter in June of 2023 asked the BLM to develop a regular schedule of meetings (previous meetings were sprung on cooperators with minimal notice), to provide documents to review before the meetings, and to have the individuals at the BLM actually in charge of drafting the documents in the meetings. BLM did set up regular meetings and invited members of BLM HQ to participate, but documents were not shared with cooperators in advance of ,or after, the meetings.

Our second letter in August of 2023 requested the BLM follow its MOU which detailed how cooperators would be assisting in the determination of the purpose and need, development of the alternatives and management prescriptions, along with an estimation of effects of implementing each alternative. Up to this point, cooperators had only been used as editors of small portions of the management prescription tables (never impact analysis), without having the benefit of previously discussing the management prescriptions in a cooperating agency meeting.

The Western Governors' Association (WGA) wrote a similar letter to the BLM outlining concerns that it had with the mapping process, the lack of inclusion of state plans as separate alternatives, and inconsistent information shared to members of its taskforce. This letter prompted the BLM to engage the WGA Taskforce in cooperating agency meetings. While a positive development for Taskforce members, counties serving as cooperators were not invited. Additionally, it became clear that the BLM was treating the Taskforce differently as it began to share many of the documents requested by counties with the Taskforce, albeit with a disclaimer "that these documents not be shared beyond the SG Task Force."

Our third letter in December of 2023 expressed our exasperation of being given an administrative draft, most of which we had never seen or discussed, to review over the Christmas Holiday. This was the first time that any information concerning the environmental or socio-economic impacts from the range of alternatives was provided to cooperators. Unfortunately, the BLM administrative draft was largely incomplete, inconsistent, and had several sections that were simply incorrect. Specifically, it lacked impact analysis for an entire alternative, it presented erroneous acreage figures and tables for Wyoming, and was woefully inaccurate in its description of socioeconomic impacts from fluid mineral leasing and development.

The BLM acknowledged these errors and promised Wyoming cooperating counties a second review of an updated draft of the socioeconomic sections before the release of the public draft. The BLM failed to uphold this promise and cooperators were never shown updated socioeconomic information before the draft went public.

IV. Consistency with Hot Springs County Natural Resource Management Plan and comprehensive Land Use Plan

The Federal Land Policy and Management Act (FLPMA), which governs the BLM, provides detailed requirements for "coordination" and "consistency" with local government land use plans. FLPMA states:

> To the extent practical, the BLM must stay apprised of local land use plans. The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration. To the extent practical, the BLM must assist in resolving inconsistencies between local and BLM land use plans. The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. 43 U.S.C. § 1712(c)(9).

There is no indication in the DEIS that BLM was apprised of local land use plans or assured that those plans were given consideration as required by FLMPA. Nowhere in the DRMPA does the BLM even quantify the local plans within the amendment area, not to mention, assure those plans are given consideration. At a minimum, the BLM should include a list of the local land use plans that are within the amendment boundary. For further assistance, Hot Springs County has attached its Natural Resource Plan, dated April 05, 2022, in its entirety for your consideration. Hot Springs County Board of County Commissioners approved this document at their June 07, 2022 in a public meeting.

FLPMA also requires that within the environmental consequences section of an EIS, the BLM include a discussion of all "Possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(a)(5). Further, where any inconsistency exists, the BLM is required to provide a statement describing "the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d). An RMP may be inconsistent with local plans only where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and regulations applicable to public lands. *Id.*; 43 C.F.R. § 1610.3-2(a).

There is no discussion of possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. Not only does this discussion concern local land use plans, but the BLM must also discuss the conflicts with its own mandates and laws. Specifically, it should discuss the obvious conflicts present in Alternative 3 with its multiple use and sustained yield mandate.

The BLM seems to suggest it does not need to do additional consistency review when it states on page ES-12: "Some counties identified their preference for management actions from one alternative or another. It is important to note that these preferences did not specifically cite state or county plan, program, or policy language."

This statement is false and should be removed from the DRMPA. Counties and the State of Wyoming both provided verbal and written comments and identified preferences of management actions based on the State's EO and county plans, programs, and policies. To the extent that additional citation or specificity was desired, the BLM should have asked for it and provided an opportunity for cooperators to provide it.

The DEIS rightfully acknowledges on page 1-12 that "BLM RMPs be consistent with officially approved or adopted resource-related plans of other Federal, State, local, and Tribal governments and policies and programs contained therein, to the extent that they are consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands." However, the DEIS does not address inconsistencies with local plans but instead, claims that the BLM will identify inconsistencies in the Final EIS after receiving comments from state and local government agencies.

Hot Springs County believes that the BLM's approach of waiting until the final stage to address inconsistencies in the EIS is flawed. This delay prevents state and local government agencies from

providing input during the drafting phase, which could have led to substantive comments that might alter the project's components and subsequent analyses. A federal agency should not address consistency solely by responding to concerns raised through comments. Instead, the BLM should have taken an active approach in identifying inconsistencies and addressing them in the DEIS. It is clear that the process by which BLM included a thorough consistency review of the Hot Springs County local natural resource plan fell far short of adequate and examples of specific inconsistencies will be detailed in this letter below.

IV. Disturbance Caps

The County recognizes the importance and necessity of establishing appropriate disturbance caps to ensure that disturbance to an area does not exceed tolerance levels of the GrSG. The Wyoming State Legislature, federal, state and local agencies, industries, conservation organizations, and landowners have dedicated significant time and resources to conserve GrSG populations in the State. We have shown the capacity and authority to protect and manage the species and its habitats on all lands by establishing oversight mechanisms and implementing protection measures, including developing a disturbance cap using the Density Disturbance Calculation Tool (DDCT). The DDCT establishes a disturbance cap of 5% for suitable GrSG habitat per an average of 640 acres over the entire DDCT assessment area.

To align with the State's EO for GrSG management strategies and to facilitate prompt calculations of disturbance areas, the County suggests that Wyoming be exempt from the 3% HAF fine scale disturbance cap, regardless of the chosen alternative under the EIS. While the BLM would still be able to gather and quantify whatever disturbance data it chooses, the 3% HAF fine scale disturbance cap should not be another disturbance calculator for permit authorization.

Currently, the disturbance levels in Wyoming, including those from fire and agriculture, are well below the 3% cap, making the requirement to meet this cap largely redundant and an inefficient use of time. Moreover, since the 3% HAF fine scale disturbance cap overlooks disturbances from fire and agriculture, which the DDCT includes, utilizing the DDCT for calculating the disturbance cap offers a more inclusive and simpler approach.

As stated earlier, the County supports the Wyoming EO including the utilization of the 5% surface disturbance cap along with the DDCT process, which has proven to be a sufficient management tool of surface disturbing activity within PHMA (core) habitat.

Additionally, the introduction of two disturbance caps could eventually lead to scenarios where one cap is met but the other is exceeded. The DEIS lacks clarity on how the BLM would manage such situations, potentially opening the door to disputes and outside legal challenges. Hot Springs County is concerned that any perceived discrepancy between the two disturbance calculations could fuel litigation from parties with the intent on halting the permit process. Clarity is key.

If the BLM proceeds with dual disturbance caps, the County would expect the agency to honor its verbal commitment made at the SGIT public meeting on May 29th, 2024, to engage with the State of Wyoming when discrepancies between disturbance caps arise.

Ultimately, by adhering to the established DDCT 5% disturbance cap, the BLM would not only effectively safeguard the habitat of the GrSG from excessive disturbance but also circumvent unnecessary project delays that could stem from additional coordination and potential litigation.

V. Grazing Management Objectives

Agriculture and livestock production in the County is necessary for the economy, its tax base, and the livelihood of the ranching/farming businesses and related industries. It is also vital to the well-being and continued health of natural resources on federal, state, and private lands. The range production of livestock and livestock grazing are management tools that are used to maintain and enhance the rangeland resource, which benefits watersheds, wildlife, water quality, and recreation, as well as providing needed forage for sustaining livestock production and wildlife habitat. Livestock grazing has been a major industry in Hot Springs County since early settlement and continues to be a vital part of the custom and culture of the County as well as an economic driver.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 163 - 168 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

8.2.3 Livestock Grazing Resource Management Objective:

A. Livestock grazing is maintained as a viable major component of the economy, custom, and culture of Hot Springs County.
B. Hot Springs County is consulted early in the scoping process whenever a proposed decision will impact grazing, local agriculture producers, and/or the economy.
C. Decisions affecting grazing on public lands use best available scientific information and localized baseline and monitoring data are given heavier weight than regional, state, or national data.

8.2.4 Livestock Grazing Priority Statements:

1. Hot Springs County strongly supports the implementation of rangeland grazing improvements, such as wells, water containment and development, and fencing.

2. Hot Springs County recognizes that Bighorn Sheep populations in Hot Springs County have been introduced and efforts to protect wild sheep populations should not further impact domestic sheep grazing on public lands.
3. Hot Springs County expects that no grazing allotments will be cancelled, eliminated or suspended due to the presumed habitat needs of any endangered, threatened, or experimental species. Should any allotments be partially or fully lost, the County expects full mitigation of the loss to be firmly and timely implemented.
4. Federal and/or state agencies should support proven techniques and tools for management programs that are founded in credible data and initiatives that are implemented to increase forage for the mutual benefit of the watersheds, livestock operations, and wildlife species.

5. Any allotments that have been turned back to a federal agency that are meeting resource objectives should be reissued within 1-year.
6. Support the equitable conversion of designated livestock animal unit months (i.e., sheep to cattle, cattle to sheep, or cattle and sheep) that achieves the desired conditions of the resource.
7. Current livestock forage allocation on public lands should be maintained or enhanced.
8. Land management plans, programs, and initiatives should provide that the amount of domestic livestock forage, expressed in animal unit months, for permitted, active use, as well as wildlife forage, be no less than the maximum number of animal unit months sustainable by range conditions in grazing allotments and districts, based on an on-the- ground and scientific analysis.
9. Hot Springs County opposes the relinquishment, retirement, or transfer of permitted grazing animal unit months in favor of conservation, wildlife, wild horses, or other uses.
10. Any reductions or suspensions in domestic livestock animal unit months should be temporary and scientifically based upon rangeland conditions and returned to the permit holder when range conditions are met.
11. Policies, plans, programs, and initiatives related to vegetation management should recognize and uphold the active use of domestic grazing over alternate forage uses in established grazing districts while upholding management practices that optimize and expand forage for grazing and wildlife in conjunction with state wildlife management plans and programs.
12. Hot Springs County opposes any agency efforts to restrict the development of rangeland improvements.
13. Increases in available forage resulting from practices or improvements implemented by managing agencies should be allocated fairly to all forage users, with a greater allocation given to a surface user who contributed resources to increase the available forage.
14. Upon termination of a permit, the livestock permittee shall be compensated for the remaining value of improvements or be allowed to remove such improvements that the permittee made on their allotment.
15. Forage reductions resulting from forage studies, fire, drought, or other natural disasters should be implemented on an allotment basis and applied proportionately based on the respective allocation to livestock, wildlife, and wild horses.
16. Rangeland health assessments must identify all causal factors (such as wildlife, weather, wild horses, fire, etc.) when there is a failure to meet the Wyoming Standards for Healthy Rangelands.
17. Livestock grazing animal unit months should not be reduced to compensate for or mitigate the impacts of wild horses, wildlife, and other causal factors.
18. The individual that files for an improvement/development permit on BLM shall be allowed to manage the resource and the permit shall be in their name if it is approved.
19. The individual that files for an improvement/development permit on USFS should be allowed to manage the resource and the permit should be in their name if it is approved. If the improvement/development cannot be exclusively in the name of the permittee, then the improvement/development should be jointly in the name of the permittee and the USFS.
20. Changes in the season of use or forage allocation must not be made without full and meaningful consultation with the permittee.
21. Historic stock trails should be designated in all applicable planning documents as valid access routes for the purpose of trailing livestock between grazing areas.

22. If grazing on federal lands is temporarily suspended due to fire, grazing should be recommenced based on monitoring and site-specific rangeland health determinations rather than solely on fixed timelines. Livestock grazing should be returned to pre-fire levels when post-fire monitoring data shows established objectives have been met or have been achieved to an extent allowed by the site potential.
23. If a vacant allotment is available, it should be utilized as an area for grazing to occur when fire has affected a permittee's allotment.

In addition, Hot Springs County encourages BLM to be consistent with the BLM Land Health Standards LHS) and specifically Standard 4 which addresses special status species management (SSS). Furthermore, the management prescriptions pertaining to livestock grazing identified in Chapter 2 (page 2-104, Table 2-12) of the DEIS should be made consistent in Chapter 4 and throughout the entirety of the document.

Specific to Adaptive Management (AM) and grazing in Alternatives 3-6, BLM has removed livestock grazing from the narrative and embedded it in the alternatives table in Chapter 2. The language in the alternatives table for AM is not consistent with current BLM rules and regulations, nor is it consistent with the Alternatives for Livestock Grazing in Chapter 2.

BLM should allow for grazing to be included in the AM process and be consistent with existing alternative language. BLM uses the terms "causal" and "contributing factors" incorrectly. Livestock grazing must be identified as a significant causal factor for LHS SSS before any modifications occur to a livestock grazing permits or leases. The County requests that the following language be considered in the alternatives: Specific to GrSG habitat, manage livestock grazing in a manner that 1) meets or makes progress toward meeting the Land Health Standard for special status species, and applies the guideline that addresses "restoring, maintaining, or enhancing habitats of...special status species to promote their conservation." (43 CFR Part 4180.2(e)(9))

Moreover, under Alternative 3, BLM analyzed for a "no grazing" alternative for all states stating "...Because PHMA would be unavailable for livestock grazing, no overarching livestock grazing objective would be needed." This alternative is economically and technically unfeasible to implement as it is in violation of the Taylor Grazing Act. The most appropriate action, as identified by the CEQ NEPA Regulations, would have been for BLM to consider it and eliminate it from further analysis as it does not meet the standard of alternatives that should be analyzed as "technically or economically" feasible. The County is strongly opposed to a "no grazing alternative" in any form.

Regarding fencing, the County generally supports wildlife friendly fencing; however, BLM must coordinate with the applicable grazing lessees should the removal of fencing be considered as those decisions could impact grazing allotments and management of the resource. Finally, any changes in grazing management should consider effects to the adjoining private or state lands as this could impact grazing management practices.

As demonstrated, agriculture production and livestock grazing are significant for the Counties. Not only do they provide an important tax base, the industry is a historical part of the local custom and culture. In the preferred alternative, the County supports the maximum amount of animal unit months (AUMs) being available for livestock grazing on BLM lands in PHMA and GHMA.

VI. Mitigation

Wyoming remains committed to working with its federal partners to develop a mitigation strategy that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. While BLM must adhere to its mitigation hierarchy (avoid, minimize, rectify, reduce, compensate), the County encourages the federal agency to work with the State of Wyoming by following the well-founded principles in the EO regarding adaptive management and the mitigation framework which includes steps for requiring compensatory mitigation. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner and provides regulatory certainty for all parties involved.

VII. Private Property Rights

As stated earlier, Hot Springs County is rich in federal resources as our lands are comprised of approximately 44% *federal surface* and an estimated 2430 *records of mining claims managed by BLM lands*. Farming, ranching, energy development, tourism and recreation contribute heavily to the heritage of the County. Rangeland used by livestock and agricultural producers continues to be the dominant land use and federal agencies should consider the effects their decisions will have on neighboring private lands.

Furthermore, access to, or restrictions from, crossing federal, state, or county managed lands should not entail encumbrances or constraints on private property. Private property rights are the cornerstone of our County and must be protected to ensure that our continued customs and culture remain intact. When an agency decision or proposed action will have a negative impact to the current use of neighboring private lands, that federal undertaking may not be supported by the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 22, 29, and 33 - 34 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

Hot Springs County is particularly concerned about the failure of the DRMPA from analyzing the effects on neighboring state and private lands in the analysis area. Whether described as adjacency effects or cumulative effects, in a state where the BLM manages approximately 18 million surface acres and 41 million subsurface acers (66% of the state), there are substantial impacts to private and state lands across the decision area.

Management and ownership patterns lack uniformity creating a complex and interwoven mix of state, private, and federal minerals that are often "coproduced." The scale of

coproduction can vary in degree and can be described in several ways. First, oil and gas can be coproduced by an individual wellbore that crosses through and produces the varying mineral estates. Second, oil and gas can be coproduced inside a drilling and spacing unit, where specific production is pro-rated to the percent of ownership in the drilling area. Finally, oil and gas can be coproduced across the entirety of a company's development play.

Oil and gas companies, like any other enterprise, must take into account risk/reward, scalability for cost saving, future development potential, infrastructure needs, and regulatory regimes. Operators prioritize areas for development where they can maximize returns and reduce risks. In the current phase of development in Wyoming's Powder River Basin, operators have large swaths of development to minimize risks, provide operational flexibility, and cost share infrastructure.

Even where a wellbore doesn't penetrate federal minerals in a particular drilling and spacing unit, gathering lines, pipelines, transmission lines, and roads to get product to the market inevitably run into federal management at some juncture. Therefore, ROW and surface occupancy restrictions have significant implications for private and state lands and minerals.

This analysis needs to be included in DRMPA. The BLM should acknowledge and analyze the cumulative effects of restrictions on the socioeconomics of our communities. The BLM's socioeconomic analysis should describe the human interests and values shaping public lands management, identifying effects of proposed actions on communities and economies, and promote the economic and social sustainability of communities near public lands.

VIII. Adaptive Management

Wyoming has worked diligently with its federal partners (BLM and USFWS) to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner.

Under Wyoming Statute § 23-1-103, "...all wildlife in Wyoming is the property of the state..." and the Wyoming Game and Fish Department (WGFD) has the legal responsibility for carrying out the purposes of this act. Using the best available science in the Adaptive Management process is necessary to continue long-term healthy populations of GrSG. Recognizing the WGFDs expertise, the State's Adaptive Management strategy places the responsibility of conducting annual population data squarely with the state agency. It is imperative that BLM recognize the WGFDs authority and expertise in this process. The County implores BLM to defer to the WGFD regarding any data collection or management decisions that pertain to the population trend analysis of GrSG within the boundaries of Wyoming.

IX. Wild Horses

In 1971, Congress enacted the Wild Free-Roaming Horse and Burro Act (Public Law 92-195), which guides the management, protection and control of wild horses and burros on federal lands managed by the USFS and BLM. Herd Management Areas (HMAs) were established in ten Western states based on the existing populations during the passing of the Act in 1971. This Act also mandates that wild/feral horses and burros are managed in a thriving ecological balance with the land and as part of the natural landscape (USFS 2021b). To ensure wild/feral horse and burro populations remain in good condition and that federal lands are protected from degradation, the growth of wild/feral horse and burro herds must be actively managed.

Population control is necessary to protect fragile ecosystems, balance shared use of resources by wildlife, and maintain herd health and protect herds from starvation. Hot Springs County encourages aggressive wild horse and burro management that will not adversely impact rangeland resources, livestock or grazing, wildlife habitat or resources, soil resources, or other varied land uses.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 139 - 144 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

The only viable alternative analyzed that appropriately addresses actual management of wild horse and burros is Alternative 3 (page 2-114, Table 2-13). Managing for "zero" Appropriate Management Levels (AMLs) within HMAs that overlap with PHMA and removing wild horses in those areas is the proper land management prescription and is the only realistic method for meeting AML at the implementation level. For the benefit of the GrSG, all available agency tools must be used to support herd management plans that prevent habitat degradation and native wildlife displacement, including the removal of all wild horses and burros from PHMA.

The State of Wyoming submitted alternative language for wild horses that based any removal of HMAs on whether wild horses were the causal factor of range degradation for a certain period of years. While substantial evidence already exists, that wild horses cause significant range damage and negatively impact GrSG, Wyoming's recommended approach would have been more economically, politically, and scientifically defensible. Unfortunately, this alternative was not properly considered in any of the other alternatives.

X. Lack of Need for ACECs

The WCCA conducted a consistency review on a statewide basis of the DEIS alternatives in relation to ACECs and county natural resource plans, which is summarized in the attached table. In addition to the consistency table, the text below details the concerns regarding the BLM's inadequate and untimely consistency review and the unnecessary designation of ACECs in areas with existing and adequate PHMA designations to manage for and protect GrSG.

An ACEC is defined as "areas within the public lands where special management attention is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a).

A potential ACEC must satisfy a three-part test before it may be designated. First, it must have "relevance," meaning it possesses "a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard." 43 C.F.R. § 1610.7-2(a)(l). Second, it must also have "importance," meaning the relevant values identified in the first step must have "substantial significance and values." 43 C.F.R. § 1610.7-2(a)(2); see also BLM Manual 1613, Section 1 l.B. For the relevance values to meet the "importance" threshold, the area must have "more than locally significant qualities ... compared to any similar resource," have qualities that make it fragile, rare, or irreplaceable, or been recognized as warranting protection to satisfy national priority concerns. BLM Manual 1613, Section 11.B.1. Third, the nominated area must require "special management" "to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish, wildlife, and plant resources, or other natural system or processes." 43 U.S.C. § 1702(a).

Certainly, ACECs can play a role in conservation and special management of historic, cultural, scenic, fish and wildlife resources. However, the BLM has not demonstrated how the addition of the proposed ACECs under Alternative 3 of the DEIS will improve Greater Sage-grouse populations and habitat more effectively than Priority Habitat Management Areas (PHMAs). Under Alternative 3, the DEIS states that the ACECs would be managed similarly to PHMAs, without additional management prescriptions. Hot Springs County strongly feels that the designation of ACECs under Alternative 3 are unnecessary given that they will be managed exactly the same as PHMAs. The BLM fails to consider how GrSG populations and habitat are already protected under existing management actions and will be further protected by the proposed management actions under Alternatives 3 of the DEIS. A significant example of this failure is the BLM's attempt to layer ACEC designations on top of existing ACECs like in Fremont and Sublette Counties.

Furthermore, ACEC designations could allow for excessive regulatory authority in the future for areas that are otherwise considered appropriate for PHMA management. Unnecessary designation opens the door for further impediments to multiple use practices.

Attached to this letter, you will find a spreadsheet that provides a thorough review of inconsistencies between the above-mentioned Wyoming County NRMPs and the proposed ACEC resource management restrictions under Alternatives 3 and 6 of the DEIS.

In addition, the County has identified several inconsistencies between the DEIS and the Hot Springs County Natural Resource Management Plans (NRMP) directly affected by the proposed ACECs. For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 15,22,27,28,33,36,39 - 40 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

Hot Springs County strongly opposes the designation of any Sage-grouse ACECs in Wyoming. As discussed earlier in these comments, we have worked diligently as a state to develop a framework that effectively manages for GrSG populations and its habitat and no new ACEC designations are warranted nor will they provide any additional protections not already in place.

XI. Fluid Mineral Development and Leasing Objective

Likely the most substantial direct impact to local government revenue in Wyoming is the management prescription for oil and gas development. Consequently, it is vital to correctly capture existing development and the Reasonably Foreseeable Development Scenario (RFDs). The RFD is even more important to get correct when it is comparing the potential impacts from wildly inconsistent alternatives. If poor or incorrect data is utilized to develop the RFD, then the RFD and resulting socioeconomic analysis will be flawed.

Certain portions of the BLM's description and analysis of existing oil and gas could be improved. For example, on 12-38 the BLM reports 9,127 wells have been "drilled" in Wyoming between 2013 and 2023. However, this figure includes workovers and wells that were never completed, which may capture wells that were never actually "drilled." The section properly includes data from the Wyoming Oil and Gas Conservation Commission, which reflects a total of 6,455 unique well spuds in Wyoming between 2013 and 2023. However, the fact that the state's number is 30% less than the BLM's number reflects a poor attempt to gather and clean-up the data for analysis.

On page 12-39, the DRMPA states that 24% of the HMAs in Wyoming are under an existing authorized lease. Additional data that should have been reflected in the DRMPA and clarified in this section is the number of leased acreage currently under litigation in Wyoming. Without including litigated leases in Table 35, it is misleading to members of the public that equate "authorized" as available for development.

In order to understand whether the RFD is truly reasonable there should be a greater description of what was utilized for inputs and variables. Table 35 in Appendix 12 would benefit from a better description of the "source" of the data provided in the table. In addition, there needs to be additional description of the table to help clarify whether these projected wells are federal surface and minerals, private/state surface and federal minerals, or mixed minerals and surface, etc.

The "Projected Production by Alternative in the Decision Area" needs to be amended to more accurately reflect the decline curves associated with modern horizontal development in Wyoming. Without any written description or justification, the projection utilizes a record production year in Wyoming as its basis for production over the next 20 years. In other words, the current projections do not consider decline curves of existing and new wells but keep historic production levels constant. However, it must be noted that the only way to maintain that statewide production level as production declines from existing wells is to drill and produce new wells.

The problem with maintaining existing production as a constant in the RFD is that it artificially reduces the negative economic impacts associated with alternatives 3 and 4 reduced projected well development. This is because the weight given to new wells is significantly reduced by the artificial base production of the existing wells.

Under Alternative 3 only 4,284 wells are expected to be drilled in the next 20 years. This is compared to Alternative 1 that projects 14,450 wells drilled in the same period of time. Although alternative 3 projects over 10,000 less wells are drilled in 20 years it only reduces the production of oil by roughly 224,000,000 barrels and gas by 4,600,000,000 mcf of gas.

Taxes derived from oil and gas development in Wyoming constitutes a significant portion of state and county revenue used to pay for public education and essential services, including roads, fire protection, emergency medical services, courthouses, libraries, landfills, hospitals, law enforcement, airports, recreation, and senior citizen centers. In Hot Springs County, oil and gas revenues are a substantial to the County's annual budget.

Oil and gas companies operating in Wyoming are assessed property (ad valorem) taxes by counties and severance taxes by the state. Although they are called "taxes" both are more akin to a royalty because production is taxed regardless of whether an operator makes a profit. Property taxes on oil and gas vary by county and range from 6-7.3% calculated by the gross revenue of the previous year's production and the value of tangible equipment and improvements. Severance taxes are calculated at 6% of gross revenue in the same manner as royalty taxes (gross revenue minus transportation and gas processing cost). Federal Royalties are also deducted from the gross revenue for the purpose of calculating severance taxes.

Property taxes on oil and gas account for over 40% of the total property taxes levied by counties in Wyoming. In 2020, the property taxes collected by counties exceeded $600 million. Additionally, severance taxes collected by the state in 2022 topped $275 million. When adding in federal lease revenues, federal and state royalties, sale and use taxes, and conservation taxes, the industry contributed $1.23 billion in taxes to state and local governments.

Furthermore, ad valorum taxes associated with oil and gas production generated an average of over $9 million a year for Hot Springs County as noted by the Wyoming State Revenue Department. A decrease in assessed valuation will affect all County operations including essential services like road and bridge construction and maintenance, investment in IT technology and cyber security, economic diversification investment (water, sewer and streets), fire equipment and personal, and daily operations.

As noted on the Petroleum Association of Wyoming (PAW) website, Wyoming ranked 8th in production of both crude oil and natural gas in 2022 nationally. Further, Wyoming ranked the 2nd largest producer of both oil and natural gas on federal lands, making the state disproportionally affected by national policy changes. According to a 2023 study released by the American Petroleum Institute, in 2021 the oil and natural gas had the following impacts on the Wyoming economy: 58,780 total jobs and $5.7 Billion in labor income.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 64 -69 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

Funding derived from mineral development constitutes a significant portion of State and County revenue used to pay for essential services, including roads, fire protection, courthouses and judicial systems, libraries, landfills, hospitals, law enforcement, airports, recreation, public health, and senior citizen centers. Any curtailment of leasing and development activity significantly impacts the socio-economics of the communities and eliminates a critical funding stream for not just our County but all counties, the State of Wyoming and its residents.

Our ability to fund organizations would be negatively affected, which includes but is not limited to, the following: WY Child and Family Development, Children's Advocacy Project (forensic interviewing of sexually assaulted and abused children), Human Resource Council, 'Youth Development Services (Youth Crisis and Intervention Center)', Humane Society, Boys and Girls Clubs, County Fair Boards, Hope Center (Domestic Violence and Sexual Assault Survivors Crisis Center and Shelter), local Libraries, Behavioral and Mental Health Crisis and Intervention Centers, Economic Development organizations and various youth and community recreation organizations. Without County support these organizations will offer fewer public services and could fail and there would be insufficient funds to provide basic services at a level needed for the protection of the county resident's health, safety, and security.

It cannot be stated enough the importance that the oil and gas industry plays in Wyoming. BLM must do all it can to find a balance between GrSG species and habitat protection with continued mineral leasing and development. This balance must be made in consideration of the interwoven land ownership patterns across Wyoming.

XII. Transportation and Transmission Objectives

Public access to routes of travel is essential to the County's transportation and public access systems and to the economic, social, political well-being, customs and culture of the communities. Many private landowners need rights-of-way across state and federal lands to access their property, to use their water rights, and to exercise their grazing rights. Rights-of-ways (ROW) and corridors provide for the development of certain types of infrastructure or facilities that are in the public interest on federal lands for a specified period of time.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 36 - 40 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

Regarding approved access for transportation or transmission within PHMA, the County will support the Wyoming EO and the surface disturbance DDCT process for determining access.

However, we strongly encourage BLM and the state to coordinate and consult with the affected County regarding any planning process or activity that restricts, eliminates, increases, or decreases access to federal or state lands and allow the County the opportunity to resolve any potential conflicts with the County's objectives, principles, and policies, prior to acting.

XIII. Socioeconomics

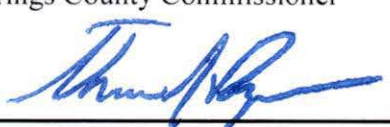
Economic impacts do matter. Access to federally administered lands and resources are critical to ensure the socioeconomic well-being, custom, culture and stability of our communities. In Hot Springs County, lands under federal or state control and decisions made for public land management can directly impact the service and non-service industries, public accessibility, and the demographics of an area. Effective coordination and consultation between the County, federal and state agencies is critical to ensuring that land management agencies thoroughly consider the effects that proposed actions have on custom, culture, and economic stability; conservation and use of the environment and natural resources in the County along with multiple use. Counties receive revenue from federal lands in many ways including mineral leasing and development, agriculture, recreation, travel and tourism, etc. Any curtailment of access to public lands will directly impact the socioeconomics of the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 18 – 23, and 29 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

The County cannot state clearly enough the importance of our ability to access federal lands to drive vibrant economic communities. BLM significantly undervalued the mineral contributions to the counties and state in the socioeconomic section. BLM must include a robust socioeconomic analysis clearly demonstrating the differences between management prescriptions in the Alternatives, which includes impacts to the tax base (royalties, rents or bonus bids, severance taxes, ad valorum taxes, sales and use tax employment income, and direct and indirect employment.) The County can assist in providing the most up-to-date information available for BLMs analysis.

In conclusion, Hot Springs County is committed to continuing our engagement as a cooperating agency along with the State of Wyoming, its state agencies and BLM to work through these important issues. We encourage BLM to align with the most recent Wyoming EO, include acknowledgement and analysis of the Wyoming State Alternative and to develop a preferred alternative that takes into consideration our comments submitted herein.

Hot Springs County Commissioner



Chairman Thomas J. Ryan

CC: The Honorable Governor Mark Gordon
The Honorable United States Senator John Barrasso
The Honorable United States Senator Cynthia Lummis
The Honorable United States Congressman Harriet Hageman

Wyoming County Commissioners Association

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June 13, 2024

Pat Deibert, BLM National Sage-Grouse Conservation Coordinator
ATTN: HQ GRSG RMPA
U.S. Bureau of Land Management - Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101

Submitted via Federal eRulemaking Portal
Portal: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Comments on the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater sage-grouse Rangewide Planning

Dear Ms. Deibert,

On behalf of Wyoming's twenty-three boards of county commissioners, please accept this letter as comments for the Bureau of Land Management's (BLM) Draft Resource Management Plan Amendment (DRMPA) and Draft Environmental Impact Statement (DEIS) for Greater sage-grouse Rangewide Planning.

In Wyoming, counties are a legal arm of the state entrusted with carrying out statutory and regulatory goals at the local level. We operate from the forefront to ensure our communities are economically vibrant, safe, and healthy places to live and work. Counties across Wyoming contain varying percentages of federal, state, and private land, which need thoughtful management. Therefore, it is imperative that counties maintain active roles as partners and co-regulators of the 18.4 million acres of BLM surface lands and 42.9 million acres of federal mineral estate that fall within their jurisdictional boundaries.

As co-regulators, counties have prepared comprehensive land use and zoning plans and natural resource plans to serve as the basis for communicating and coordinating with the federal government and its agencies on land and natural resource management issues. Wyo. Stat. § 18-5-208(b). Communication, coordination, and collaboration with the BLM is vital, especially where significant BLM land and minerals exists, and management decisions can significantly impact the regulatory framework, customs, culture, and socioeconomics of our counties.

As partners, counties work diligently to support the work of our federal land managers to overcome shared challenges and achieve mutual goals. Our counties actively participate with

Wyoming BLM field offices and the Wyoming State BLM Office on National Environmental Policy Act (NEPA) projects, trainings, presentations, and special initiatives. Our work together is vital to achieve the goals of the BLM and our communities.

The current Greater sage-grouse DRMPA is no exception, with 19 of Wyoming's counties actively participating as cooperating agencies. Throughout the DRMPA process, we have worked in good faith to assist the BLM in the development of the amendment and DEIS. These comments are not written as general members of the public but as governmental partners that are intimately tied to the success or failure of this amendment.

I. County Planning Efforts and Natural Resource Plans

Wyoming Counties have created substantive natural resource plans after years of public input. These plans establish policies written to preserve and enhance the beauty, use, and resilience of our natural resources. Beyond just Greater sage-grouse policies, counties' natural resource plans express the desire to have a healthy environment, maintenance of cultural history and identity, well-paying jobs, and active industries.

These carefully crafted local plans complement the BLM's multiple use mission and can serve as a basis for coordinating when the BLM amends its resource management plans (RMPs). Just like RMPs, natural resource plans take a comprehensive look at the resources, lands, and people. While multiple use is modestly described in the current DRMPA the narrowed scope of the plan amendment makes capturing the intent of multiple use management difficult, if not impossible.

> The term **"multiple use"** means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

43 U.S.C. § 1702(c).

Unlike a RMP revision that looks at the balance of all resources and the needs of the communities that rely on them, the current DRMPA looks at other valuable resources strictly through the lens of Greater sage-grouse management. This narrow lens creates an unfortunate appearance of resource conflict, pitting the Greater sage-grouse against grazing, fluid minerals, renewable energy, etc. Beyond creating a scarcity mindset, this lens also affects the way that impacts are described throughout the document.

The WCCA is concerned that without a clearer description of the BLM's required management of lands for multiple use, the DRMPA and DEIS will be easy targets for litigants who allege the BLM is not doing enough to protect Greater sage-grouse habitats against known impacts throughout the range. Obviously, the BLM is attempting to find the appropriate balance with this plan amendment, but Wyoming counties greatly encourage the BLM to further incorporate this multiple use balance throughout the document. The BLM should include additional language to better defend itself from outside litigation.

II. Consideration of Local Plans and Meaningful Involvement of Local Government in the Development of Land Use Plans

The Federal Land Policy and Management Act (FLPMA), which governs the BLM, provides detailed requirements for "coordination" and "consistency" with local government land use plans. FLPMA requires the BLM stay apprised of local land use plans. The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration in the development of their resource management plans. Additionally, to the extent practical, the BLM must assist in resolving inconsistencies between local and BLM land use plans. The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. 43 U.S.C. § 1712(c)(9).

There is no indication in the DRMPA that BLM was apprised of local land use plans or assured that they were given consideration. There is no discussion of the number of plans reviewed by the BLM or any mention of plan content. Although, most Wyoming counties have updated their natural resource plans in the last few years, there is not a single reference to any plans in the entirety of the document. At a minimum, the BLM should include a list of the local land use plans that are within the amendment boundary. Wyoming counties have already submitted their local land use plans to their local BLM field offices and the Wyoming State BLM Office, but to the extent BLM Headquarters needs additional copies the WCCA can provide these plans.

The BLM seemingly checks the box for consistency with local plans when it states, "Some counties identified their preference for management actions from one alternative or another. It is important to note that these preferences did not specifically cite state or county plan, program, or policy language." (ES-12). However, this statement is false and should be removed from the DRMPA.

Counties and the State of Wyoming both provided verbal and written comments and identified preferences of management actions based on State Wyoming Executive Order 2019-3 (EO) and

county plans, programs, and policies. Many of Wyoming's counties have expressed support for the EO in their approved natural resource plans. Hot Springs County's Natural Resource Management Plan, approved April 5, 2022, provides that federal plans and actions related to Greater sage-grouse should be consistent with the State of Wyoming EO on Greater sage-grouse. Converse County's Natural Resource Management Plan, approved July 5, 2022, states that the county supports the State of Wyoming's Greater sage-grouse conservation strategy.

Based on its EO, the State of Wyoming submitted its own alternative to the BLM to provide management prescriptions for the range of alternatives. This alternative was not evaluated by the BLM or even discussed in cooperator meetings. To the extent that additional citation or specificity was desired, the BLM should have asked for it and provided an opportunity for cooperators to provide it. The BLM never sought additional information from local plans and never provided an opportunity for specific discussion.

Unfortunately, Wyoming counties and all cooperators were powerless in directing how the BLM ran its cooperating agency process and meaningful opportunities for participation in the amendment process were far and few between. Wyoming counties sent numerous letters requesting the BLM to improve the cooperating agency process and work in good faith with cooperators.

The cooperating agency process was not without disagreement or frustration as our opportunity to engage as outlined by FLPMA, the Counsel of Environmental Quality's NEPA regulations, and written in county Memorandum of Understanding (MOU), was ignored by the BLM. When these conflicts arose, Wyoming counties did everything in our power, and in accordance with county MOUs, to raise concerns expeditiously to resolve issues, as expressed in our candid conversations and frank letters.

The WCCA is not blind to the challenges of running a multi-state range-wide planning effort. However, as cooperators, the BLM had a host of partners it could have asked for advice or input on how to effectively shape the cooperator meetings. We would not have suggested that the BLM host exclusive meetings with the Western Governors Association (WGA) as the sole meeting across state boundaries. While Wyoming counties share a strong relationship with our governor and his staff, counties from other states do not. These exclusive meetings were complimented with exclusive documents that the BLM instructed the WGA members not to share with nonmembers of the WGA. This cut out all counties and conservation districts, and state agencies that were not invited to the WGA meetings by their governors.

III. Chapter 4 Impact Analysis of Consistency with State and Local Plans

Chapter 4 of the DRMPA should have included a discussion of "Possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned." § 1502.16(a)(5). Where any inconsistency exists, the BLM is required to provide a statement describing "the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d). An RMP may be

inconsistent with local plans only where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and regulations applicable to public lands. *Id.*; 43 C.F.R. § 1610.3-2(a).

There is no discussion of possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. Not only does this discussion concern local land use plans, but the BLM must also discuss the conflicts with Wyoming's EO and its own mandates and laws. Specifically, it should discuss the obvious conflicts present in Alternative 3 with its multiple use and sustained yield mission, the Taylor Grazing Act, and the Mineral Leasing Act, amongst others.

On the other hand, this analysis can also highlight where the BLM is intentionally aligning with state and local governments in furtherance of its management goals. This intentional alignment is what prompts the WCCA's general support of Alternative 5. Alternative 5 is the closest in alignment to the Sage-grouse Implementation Team's (SGIT) recommended core area map. Contrarily, Alternative's 3, 4, and 6, do not align with the SGIT's recommended core area map boundaries, collapse general and priority habitat management areas, and include areas of critical environmental concern (ACEC). Aligned Habitat Management Area (HMA) boundaries between the BLM and the State of Wyoming are necessary for effective and consistent management. The WCCA also supports Alternative 5's attempted alignment with the newest strategies for habitat protection with the recognition of Stewardship Habitat Management Areas in Northeast Wyoming.

IV. Description and Quantification of Impacts to State and Private Lands

The DRMPA states in the second sentence of the executive summary that the sagebrush landscape is managed by a mix of federal, state, tribal, local agencies, and private landowners. This is well known in Wyoming and abundantly clear for everyone looking at a map of BLM management and Greater sage-grouse habitat. Federal managed lands, surface and mineral, are interspersed across Wyoming with state and private lands. Consequently, successful Greater sage-grouse management requires a cross-jurisdictional approach and partnership at all governmental levels.

Beyond the need for strong cross-jurisdictional partnerships, the land management pattern in Wyoming creates substantial opportunity for outstretched impacts in our communities that have substantial BLM lands and minerals. The BLM manages approximately two-thirds of Wyoming's subsurface estate and over 18 million surface acres. Such substantial federal land and mineral management creates a hodgepodge patchwork of mineral ownership with state, private, and federal lands and minerals across the state.

This interwoven ownership pattern of federally managed minerals and surface with state and private surface and minerals means that oil and gas is almost always coproduced, grazing operations utilize all lands, mines include all mineral owners, and transmission and other right of ways (ROWs) must traverse state, federal, and private lands. In other words, the BLM cannot

change their management without it having a substantial impact on private and state lands and the entirety of industry in Wyoming.

On page 1-5 the DRMPA provides "A planning area boundary includes all lands regardless of jurisdiction; however, the BLM can only make decisions on the public lands and federal mineral estate within the agency's jurisdiction." While this planning effort is focused on the BLM's approach for management, it will impact the entirety of Wyoming. NEPA requires the federal government to analyze the possible environmental and socioeconomic impacts to adjacent properties from its proposed management prescriptions.

Unfortunately, the DRMPA only provides minimal descriptions of possible environmental impacts from the alternatives on surrounding state and private lands. For example, the fluid mineral section of the DRMPA states that no surface occupancy (NSO) stipulations can push infrastructure to surrounding private and state lands which may result in Greater sage-grouse habitat fragmentation. (4-4). Additionally, "restrictions in development on BLM lands might push development onto private land, which could result in indirect impacts as described under Nature and Types of Effects." (4-23).

For ROWs, the DRMPA provides that if ROWs are managed as exclusion it "may result in more widespread development, potentially in higher quality habitat, on private lands if BLM-administered lands could not be used." (4-5). The DRMPA further provides that the inability to site ROWs in Priority Habitat Management Areas (PHMA) could lead to longer ROW routes to bypass closed areas, increasing the surface disturbance and other impacts of ROW siting on Greater sage-grouse habitats on adjacent private lands. (4-23 and 24). ROW exclusions would also inhibit development on adjacent private and state land where transmission infrastructure would be needed across BLM-administered lands. (4-79).

For grazing, the DRMPA states "making public lands unavailable for grazing that are adjacent to private grazing lands would result in more fencing." (4-9). "Additionally, removing livestock from BLM lands may concentrate grazing on private lands, potentially leading to overgrazing and decreased GRSG habitat suitability where concentrated grazing occurs." (4-24). "Without the opportunity to graze public lands, ranchers would be incentivized to sell their private lands leading to an increased potential for urbanization in some areas, leading to a loss of forage for both livestock and native grazers, and would remove the opportunity to graze livestock in the future, should management decisions change in subsequent resource management and land use plans." (4-72).

For coal, the DRMPA states that closing an area to coal may move mining operations to nearby private lands. Indirect impacts include loss of coal production for public use and for generating sales and tax revenues and federal royalties from production. (4-103). The Mineral Materials section has similar concerns, an "effect is the potential for mineral materials mining to shift from BLM to state or private lands. In that case, the impacts of mining (such as noise, dust and truck traffic) could be shifted to areas where such impacts would be a nuisance to farmers and residential areas." (4-110).

Even with the limited analysis of state and private land impacts, when the BLM employs more substantial restrictions across the resource uses then there is a greater impact to private and state lands. Instead of allowing a natural balance of impacts across federal, state, and private lands, the DRMPA major restrictions in Alternatives 3 and 4 shift the environmental impacts squarely on state and private lands. Accurately, and ironically, the DRMPA describes in numerous places that the restrictions imposed in Alternatives 3 and 4 will actually increase potential degradation of habitat by requiring the erection of millions of miles of fence, pushing oil and gas pad locations onto possibly better habitat on private and state lands, removing the economic opportunity private land owners possibly forcing the urbanization of ranches, increasing the length of roads and disturbances associated with pipeline infrastructure, amongst others.

These environmental impacts are certainly valid concerns, however, the DRMPA needs to do a better job describing the socioeconomic impacts from these consequences. Commonly, the DRMPA states that BLM restrictions will simply shift development from federal lands to state and private lands. For example, the DRMPA suggests that if grazing is closed on public lands ranchers will just need to graze more on state and private lands or buy forage. Similarly, the DRMPA states that oil and gas wells will just shift off federal surface to state and private lands. While technology does allow for impressive directional drilling, a company cannot simply move a well pad a quarter of a mile east or west and continue with development as normal. More likely, the project will be reevaluated and may not be pursued.

There should be a more robust analysis and quantification of impacts to state and private lands, not just shifting development – but losing it entirely. Reducing and eliminating federal land grazing, mineral development, rights of way, or surface occupancy, does not simply limit federal production and associated revenue generation, it also eliminates production from state and fee ownership simply because mineral development in Wyoming almost never occurs solely on private and state lands. Attempting to thread the needle around federally managed lands is imprudent, impractical, and virtually impossible.

Beyond the socioeconomic impacts, there needs to be a more robust analysis of the environmental impacts associated with moving development off federally managed lands to private and state lands. To begin with, the BLM needs to evaluate the quality of habitat on private and state lands in comparison to those lands managed by the BLM. It is not always going to be a 1:1 equivalence, as private and state lands often contain superior habitat.

Unfortunately, the wide-brush restrictions don't allow for the BLM to conduct subsequent environmental analysis, it must be done now. If the BLM selects an alternative that forces development away from federally managed lands (e.g. NSO restriction) it takes away the opportunity for the BLM to work with state agencies to site projects in the least environmentally impactful locations.

V. Cumulative Impact Analysis

The BLM has alleged that the court's Greater sage-grouse plan amendment ruling required it to conduct a rangewide DRMPA and DEIS. It is unclear to the WCCA where the court directed the BLM to follow a particular rangewide approach to the DRMPA. The court said, "While courts must give deference to an agency's scope decision, the BLM's focus on individual States required a robust cumulative impacts analysis given the range of the sage grouse. *W. Watersheds Project v. Schneider*, 417 F. Supp. 3d 1319, 1333 (D. Idaho 2019). Therefore, the court simply requested that robust cumulative impacts analysis be provided given the multi-state range of the Greater sage-grouse.

Unfortunately, the cumulative impact sections do not provide a robust analysis. For example, the most restrictive of the alternatives for oil and gas development, Alternative 3, does not describe any cumulative impacts, instead it just restates the management prescription and says it is the "most restrictive."

> Under Alternative 3, management would focus on maximum protection of [Greater sage-grouse]. Alternative 3 would conserve and manage [Greater sage-grouse] habitats to support persistent, healthy populations, consistent with BLM's sensitive species policy and in coordination with state wildlife agencies. In areas with large, contiguous areas of BLM-administered lands, conservation and management should maintain existing connectivity between [Greater sage-grouse] populations. This effect would be limited in areas with BLM-administered (sic) lands interspersed with lands managed by other agencies or individuals. With all of PHMA closed to new fluid mineral leasing, this alternative would be the most restrictive and limit development of fluid mineral resources more than other alternatives. (4-243).

This is not a cumulative impact analysis. Cumulative impact analysis is meant to examine the combined incremental effects of human activity. The BLM should have used this section to discuss combined impacts of other policies and regulations, but the instead, it uses the section to state that Alternative 4 impacts are "greater" than impacts associated with Alternatives 1 and 2 but less than Alternative 3. The DRMPA concludes by restating the management prescriptions of each of the Alternatives. Again, this is not a cumulative impact analysis.

VI. Reasonably Foreseeable Development Inputs and Variables

The Reasonably Foreseeable Development (RFD) scenario is not a crystal ball, but rather a way to look at the development and economic outcomes from the BLM's management prescription for oil and gas across the range of alternatives. The outcomes are all driven by the data and variables utilized in the RFD model. If the data and information used for the inputs are sound and the variables are accurate then the outcomes can be reliable. If poor or incorrect data is utilized to develop the RFD model, then the outcomes and resulting socioeconomic analysis will be flawed. Unfortunately, the BLM does not provide what data or variables it is using to develop its RFD.

The lack of clarity is particularly concerning, considering some of the other analyses presented in the DRMPA. For example, on page 12-38 the BLM reports 9,127 wells have been "drilled" in Wyoming between 2013 and 2023. However, this figure includes workovers and wells that were never completed, which certainly is capturing wells that were never actually "drilled" or counting a single well that were drilled more than once. Thankfully the section also includes data from the Wyoming Oil and Gas Conservation Commission (WOGCC) as well, which reflects a total of 6,455 unique well spuds in Wyoming between 2013 and 2023. However, the fact that the state's number is 30% less than the BLM's number reflects a poor attempt to gather and clean-up the data for analysis. Considering the WOGCC was actively engaged in the cooperating agency process, this discrepancy should have been resolved well before the DRMPA was released.

Additionally, on page 12-39 the DRMPA states that 24% of the HMAs in Wyoming are under an existing authorized lease. This implies to the public that an operator is authorized to develop the lease. However, there are hundreds of thousands of acres of leases that are currently being litigated and cannot be developed. This information should be made available in the DRMPA. The BLM could further clarify how many of those acres are held by production to describe the level of development.

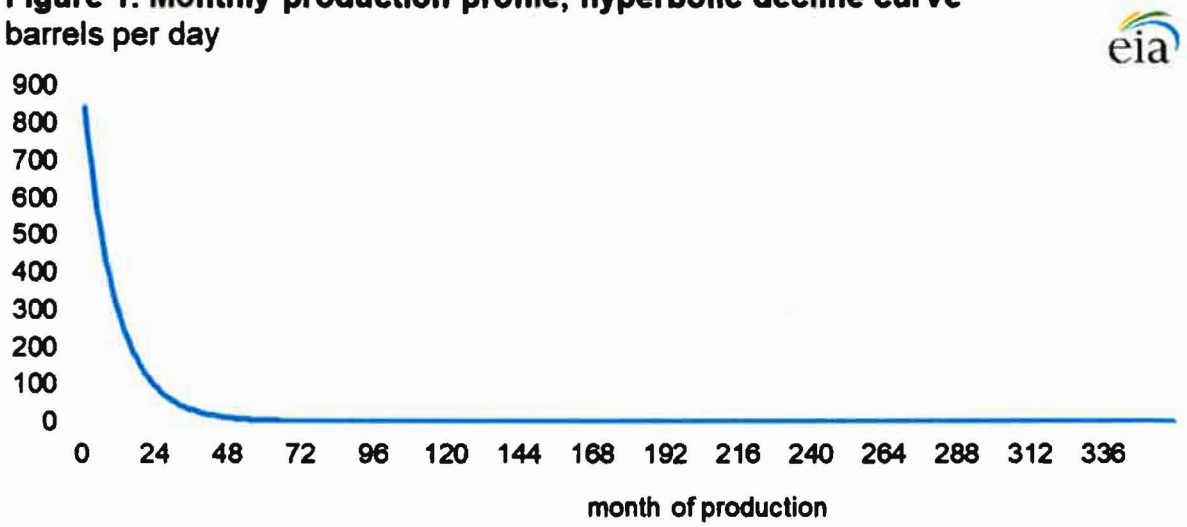
Table 35 in Appendix 12 of the DRMPA would greatly benefit from a better description of the "source" of the data provided in the table. It currently states that the information is from a previous planning effort, but that does not clarify the original source. How did the BLM come up with the original well numbers for Alternatives 1 and 2? How did they come up with the disturbance acreage associated with the wells drilled? Is it based upon existing disturbances within PHMA or HMAs in general?

However, the largest gap in information for the table is whether the projected wells are just federal surface and minerals, or a combination of private/state surface and federal minerals, or mixed minerals and surface, etc. To the extent that this information is federal only or mixed minerals there is a substantial data gap being presented. The analysis must also contain the development of private and state minerals in the decision area.

The "Projected Production by Alternative in the Decision Area" needs to be amended to more accurately reflect the production decline curves associated with modern horizontal well development in Wyoming. Without any written description or justification, the projection presumably utilizes a record production year in Wyoming as its base production for oil and gas for next 20 years. The projection does not include a production decline curve on existing wells, which is an absolute certainty in the life of horizontal wells. In a March 16, 2023, "Production Decline Curve Analysis in the Annual Energy Outlook 2023" (Production Decline Curve Analysis - Energy Information Administration (eia.gov)) the U.S. Energy Information

Administration describes the estimated ultimate recovery of wells. The decline curve converts from a hyperbolic decline to an exponential decline as shown in the figure below.

Figure 1. Monthly production profile, hyperbolic decline curve
barrels per day



Although the figure above is only an example of a declining production curve, it illustrates the problem with not including some decline in base production in the state. The yearly base production should include a reasonable decline curve for existing wells. The only way that the state's overall production will not decline year over year is for industry to drill and produce new wells.

The problem with maintaining existing production as a constant over the next twenty years in the RFD is that it artificially reduces the negative economic impacts of reduced well development projected in Alternatives 3 and 4. This is because the loss of production associated with the development of new wells is less significant with an artificially high base production level from the existing wells.

Again, it is unclear whether this RFD considers the entirety of the planning area (including state and private lands) or if the wells are projected solely on federal surface and minerals. The BLM should provide an updated RFD that considers the changes in development on state and private lands. This data and analysis are incredibly important because it serves as the basis for the socioeconomic impacts. Correcting this omission will almost certainly require a supplement EIS.

VII. Socioeconomic Impacts from Alternatives 3, 4, and 6

Even without clear RFDs and limited impact analysis, Alternatives 3, 4, and 6 would incur substantial damage to local government revenues. Taxes derived from oil and gas development

in Wyoming constitutes a significant portion of state and county revenue used to pay for public education and essential services, including roads, fire protection, emergency medical services, courthouses, libraries, landfills, hospitals, law enforcement, airports, recreation, and senior citizen centers.

On page 3-50 while discussing revenues from mineral development DRMPA states "These revenues **could be indirectly impacted** by BLM management decisions on [Greater sage-grouse] HMAs, if the decisions affect the level of use of natural resources." (emphasis added). It is unclear what would be "indirect" about the management decisions the BLM is proposing across the range of alternatives. For example, no-surface occupancy restrictions in Alternative 3 and 6, will absolutely stop development of the mineral resource in certain areas in Wyoming. This is reflected in the substantial reduction of new oil and gas wells drilled under Alternatives 3, 4, and 6. The WCCA requests the language be changed to "these revenue will be directly impacted by BLM management decisions."

Based on the data provided in the DRMPA, we've assembled the table below to better compare the projected economic impacts on the oil and gas industry of the alternatives. The projected economic fallout from a BLM selection of Alternatives 3, 4, or 6 would be catastrophic to our communities. The existing expected economic output of $15,598,212,419 is cut in more than half by the selection of Alternative 3 at $7,615,494,009.

Wyoming Alternative	Type of Impact	Employment		Labor Income		Economic Output	
		Analysis Area	State	Analysis Area	State	Analysis Area	State
1 & 2	Direct	16,564	16,564	1764447162	1,764,447,162	11,626,402,461	11,626,402,461
	Indirect	12,284	12,337	776,372,794	780,303,077	2,672,749,560	2,684,939,890
	Induced	8,233	8,246	334,329,965	335,125,553	1,284,310,806	1,286,870,068
	Total	**37,081**	**37,147**	**2,875,149,921**	**2,879,875,792**	**15,583,462,827**	**15,598,212,419**
3	Direct	6,963	6,963	708,184,660	708,184,660	5,901,184,407	5,901,184,407
	Indirect	5,228	5,244	356,127,143	357,292,356	1,177,946,394	1,181,560,469
	Induced	3,410	3,414	138,483,362	138,719,231	531,990,388	532,749,134
	Total	**15,601**	**15,621**	**1,202,795,166**	**1,204,196,247**	**7,611,121,189**	**7,615,494,009**
4	Direct	11,557	11,557	1,213,568,369	1,213,568,369	8,640,549,791	8,640,549,791
	Indirect	8,604	8,638	557,201,554	559,689,736	1,893,160,674	1,900,878,122
	Induced	5,718	5,726	232,189,123	232,692,793	891,949,436	893,569,653
	Total	**25,878**	**25,921**	**2,002,959,045**	**2,005,950,898**	**11,425,659,900**	**11,434,997,565**
5	Direct	15,728	15,728	1,672,490,384	1,672,490,384	11,127,941,682	11,127,941,682
	Indirect	11,670	11,719	739,785,658	743,475,229	2,542,611,380	2,554,055,105
	Induced	7,813	7,826	317,279,718	318,026,579	1,218,814,397	1,221,216,915
	Total	**35,211**	**35,273**	**2,729,555,760**	**2,733,992,192**	**14,889,367,459**	**14,903,213,701**
6	Direct	15,560	15,560	1,654,005,799	1,654,005,799	11,027,827,872	11,027,827,872
	Indirect	11,546	11,595	732,434,155	736,075,311	2,516,458,936	2,527,752,496
	Induced	7,729	7,741	313,852,673	314,589,734	1,205,649,832	1,208,020,824
	Total	**34,835**	**34,896**	**2,700,292,628**	**2,704,670,845**	**14,749,936,640**	**14,763,601,192**

Oil and gas companies operating in Wyoming are assessed property (ad valorem) taxes by counties and severance taxes by the state. Although they are called "taxes" both are more akin to a royalty because production is taxed regardless of whether an operator makes a profit. Property taxes on oil and gas vary by county and range from 6-7.3% calculated by the gross revenue of

the previous year's production and the value of tangible equipment and improvements. Severance taxes are calculated at 6% of gross revenue in the same manner as royalty taxes (gross revenue minus transportation and gas processing cost). The U.S. Department of the Interior (DOI) Natural Resources Revenue Data reports that Wyoming federal lands produced $1,656,396,384.55 in revenue for the year 2022. DOI dispersed $785 million to the State of Wyoming, primarily revenue from oil and gas production.

According to state and federal data collected by the Petroleum Association of Wyoming, property taxes on oil and gas account for over 40% of the total property taxes levied in the state of Wyoming. In 2020, the property taxes collected by counties exceeded $600 million. Additionally, severance taxes collected by the state in 2022 topped $275 million. When adding in federal lease revenues, federal and state royalties, sale and use taxes, and conservation taxes, the industry contributed $1.23 billion in taxes to state and local governments.

The oil and gas industry also supports a significant amount of direct and indirect employment across the state. According to a 2023 study released by the American Petroleum Institute, Wyoming's oil and natural gas industry supported 58,780 jobs and provided up to $5.7 billion in wages in 2021. For every direct natural gas and oil job the industry generates 1.9 additional jobs in services, wholesale, construction, transportation, and manufacturing. According to the U.S. Bureau of Labor Statistics and the Wyoming Department of Workforce Services, the Wyoming labor force numbers around 300,000 people. Therefore, by the numbers, the oil and gas industry in Wyoming supports around 12-19% of the state's total workforce.

VIII. Environmental Justice

Fifteen of Wyoming's 21 counties in the analysis area are identified populations that met the criteria for further consideration for environmental justice communities. However, no local government participating in Wyoming as a cooperating agency was asked to provide any input regarding "fair treatment and meaningful involvement" in relation to the formulation execution, and enforcement of environmental laws, regulations, and policies. In fact, the topic of environmental justice never came up in cooperating agency meetings.

The DRMPA discusses several concerns of environmental justice populations regarding economic impacts from greater resource restrictions on livestock grazing and mineral, oil and gas development. The DRMPA dismisses the concerns quickly by stating that "there is a lack of evidence that individuals employed in the sectors are most likely to be impacted by BLM management decisions (such as farming, ranching, and mining sectors) have a higher percentage of people who identify as minority, low income, or American Indian and Alaska Native." (3-54).

In rural western America, this dismissal seems short sighted and inaccurate. Bedrock industries that employ large percentages of the workforce keep our communities alive. While a particular oil and gas job may not be held by a minority, low income, or tribal member, the impacts from those workers leaving our communities will affect the entire county. Less students in schools, less people shopping at local grocery stores, going out to eat, buying fuel, etc. Wyoming has

numerous ghost towns from single industries drying up. The impacts from additional restrictions on bedrock industries should absolutely be included in the analysis for environmental justice communities.

IX. Areas of Critical Environmental Concern

The proposed ACECs in Alternatives 3 and 6 stand to create areas of critical economic concern for counties in Wyoming, while not being necessary to prevent irreparable environmental impact or benefit to Greater sage-grouse. Impacted Wyoming counties are strongly opposed to ACECs being utilized to manage Greater sage-grouse in Wyoming.

The WCCA conducted a consistency review of the DEIS alternatives in relation to ACECs and county natural resource plans, which is summarized in the attached table. Substantial effort has been put forth to build the county table to assist with the BLM's review, therefore, it is our request that the BLM utilize the table provided to conduct its required consistency evaluation and incorporate the required discussion for the Final EIS.

An ACEC is defined as 'areas within the public lands where special management attention is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a). A potential ACEC must satisfy a three-part test before it may be designated.

First, it must have "relevance," meaning it possesses "a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard." 43 C.F.R. § 1610.7-2(a)(l).

Second, it must also have "importance," meaning the relevant values identified in the first step must have "substantial significance and values." 43 C.F.R. § 1610.7-2(a)(2); see also BLM Manual 1613, Section 1 l.B. For the relevance values to meet the "importance" threshold, the area must have "more than locally significant qualities ... compared to any similar resource," have qualities that make it fragile, rare, or irreplaceable, or been recognized as warranting protection to satisfy national priority concerns. BLM Manual 1613, Section 11.B.1.

Third, the nominated area must require "special management" "to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish, wildlife, and plant resources, or other natural system or processes." 43 U.S.C. § 1702(a).

Certainly, ACECs can play a role in conservation and special management of historic, cultural, scenic, fish and wildlife resources. However, the BLM has failed to demonstrate how the addition of the proposed ACECs under Alternative 3 and 6 of the DEIS will improve Greater sage-grouse populations and habitat more effectively than PHMAs.

Under Alternative 3, the DEIS states that the ACECs would be managed similarly to PHMAs, without additional management prescriptions. This makes ACECs under Alternative 3 completely unnecessary given that they will be managed the same as PHMAs. The BLM fails to consider how Greater sage-grouse populations and habitat are already protected under existing management actions and will be further protected by the proposed management actions under Alternatives 3 of the DEIS.

Likewise, Alternative 6 is unnecessary to protect and prevent irreparable damage. There is not a need to protect the associated values with an NSO. Given the environmental value of existing flexibility for placing well pads in locations on federal, state or private lands that are the least suitable for Greater sage-grouse habitat, a NSO has the potential to drastically increase the environmental impacts. (4-119). Keeping all the tools available for the BLM is vital for best management in Wyoming. Managing all habitat to the same standards and applying restrictions equally across state, private, and federally managed lands is also in line with Wyoming's EO.

X. Wild Horses

In 1971, Congress enacted the Wild Free-Roaming Horse and Burro Act (Public Law 92-195), which guides the management, protection and control of wild horses and burros on federal lands managed by the USFS and BLM. Herd Management Areas were established in ten Western states based on the existing populations during the passing of the Act in 1971. This Act also mandates that wild horses and burros are managed in a thriving ecological balance with the land and as part of the natural landscape (USFS 2021b). To ensure wild horse and burro populations remain in good condition and that federal lands are protected from degradation, the growth of wild/feral horse and burro herds must be actively managed.

Population control is necessary to protect fragile ecosystems, balance shared use of resources by wildlife, maintain herd health and protect herds from starvation. The only viable alternative analyzed that appropriately addresses actual management of wild horse and burros is Alternative 3 (Page 2-114, Table 2-13). Managing for "zero" Appropriate Management Levels (AMLs) within Herd Management Areas that overlap with PHMA and removing wild horses in those areas is the proper land management prescription and is the only realistic method for meeting AML at the implementation level. For the benefit of the Greater sage-grouse, all available agency tools must be used to support herd management plans that prevent habitat degradation and native wildlife displacement, including the removal of all wild horses and burros from PHMA.

The State of Wyoming submitted alternative language for wild horses that based any decision to remove Herd Management Areas on whether wild horses were the causal factor of range degradation for a certain period of years. While substantial evidence already exists, that wild horses cause significant range damage and negatively impact Greater sage-grouse, Wyoming's recommended approach would have been more economically, politically, and scientifically defensible than any of the alternatives in the DEIS. Unfortunately, this alternative was not properly considered in any of the other alternatives. Beyond a missed opportunity for better

management, the BLM's failure to evaluate the state's alternative language is a violation of CEQ's NEPA regulations. The BLM should evaluate the state's alternative language it submitted in the final EIS or a supplemental EIS.

XI. Adaptive Management

The adaptive management strategy presented for Alternatives 3, 4, 5, and 6, is another missed opportunity in the DRMPA. Adaptive management represents one of the best opportunities for the BLM to build cohesion and good faith with the State of Wyoming, who has jurisdiction over the management of Greater sage-grouse. Beyond wildlife management responsibilities, the State of Wyoming also shares jurisdiction over the management of Greater sage-grouse habitat.

Unfortunately, the BLM chose not to build the adaptive management strategy with cooperating agencies. The BLM also did not evaluate the State of Wyoming's alternative language submitted for adaptive management. Instead, the BLM crafted the adaptive management strategy alone and asked the state for feedback. This process did not lead to the development of a workable strategy that articulates the authority and expertise of our state wildlife management agency, relies on all available best scientific resources, fosters necessary collaboration and essential partnerships across jurisdictions. The WCCA is hopeful that the BLM continues to work with the State of Wyoming to develop an adaptive management strategy that meets all these goals.

The WCCA is particularly concerned about the possibilities of inconclusive causal factor analyses. Both the rapid assessment and the causal factor analysis have serious permit implications, not just from their contents but the timeframe they are completed in. The way that adaptive management is currently written will penalize permittees if the BLM, for whatever reason, fail to complete reports in time. This will reduce certainty and may lead to delays in approvals of necessary permits. Additionally, the WCCA sees this opportunity to halt permitting as a potential litigation tool from outside groups.

It is unclear why the BLM would require additional automatic restrictions if there is no identified cause for the habitat or population decline. The automatic restrictions suggest that there is a need to reduce disturbance, but even that assumes that disturbance is a cause of the threshold trigger. To the extent there is no causal analysis to support a restriction, how is the authorized officer going to document a biological rationale for the restriction? The WCCA is also concerned that adaptive management would be applied beyond PHMA into the other HMA boundaries.

XII. Disturbance Caps

The WCCA recognizes the importance and necessity of establishing appropriate disturbance caps to ensure that disturbance to an area does not exceed tolerance levels of the Greater sage-grouse. The Wyoming Legislature, federal, state and local agencies, industries, conservation organizations, and landowners have dedicated significant time and resources to conserve Greater sage-grouse populations in our state. We have shown the capacity and authority to protect and manage the species and its habitats on all lands by establishing oversight mechanisms and implementing protection measures, including developing a disturbance cap using the Density

Disturbance Calculation Tool (DDCT). The DDCT establishes a disturbance cap of 5% for suitable Greater sage-grouse habitat per an average of 640 acres over the entire DDCT assessment area.

To align with the Wyoming's EO for Greater sage-grouse management and to facilitate prompt calculations of disturbance areas, the WCCA suggests that Wyoming be exempt from the 3% Habitat Assessment Framework (HAF) fine scale disturbance cap, regardless of the chosen alternative under the DRMPA. While the BLM would still be able to gather and quantify whatever disturbance data it chooses, the 3% HAF fine scale disturbance cap should not be another disturbance calculator for permit authorization.

Currently, the disturbance levels in Wyoming, including those from fire and agriculture, are well below the 3% cap, making the requirement to meet this cap largely redundant and an inefficient use of time. Moreover, since the 3% HAF fine scale disturbance cap overlooks disturbances from fire and agriculture, which the DDCT includes, utilizing the DDCT for calculating the disturbance cap offers a more inclusive and simpler approach.

As stated earlier, the Wyoming counties support Wyoming's EO including the utilization of the 5% surface disturbance cap along with the DDCT process, which has proven to be a sufficient management tool of surface disturbing activity within PHMA habitat.

Additionally, the introduction of two disturbance caps could eventually lead to scenarios where one cap is met but the other is exceeded. The DEIS lacks clarity on how the BLM would manage such situations, potentially opening the door to disputes and outside legal challenges. Any perceived discrepancy between the two disturbance calculations could fuel litigation from parties with the intent of halting the permit process. Clarity is key.

Ultimately, by adhering to the established DDCT 5% disturbance cap, the BLM would not only effectively safeguard the habitat of the Greater sage-grouse from excessive disturbance but also circumvent unnecessary project delays that could stem from additional coordination and potential litigation.

XIII. Conclusion

Wyoming counties have a long and active history of working on Greater sage-grouse issues with the BLM, the Wyoming Game and Fish Department (WGFD), the SGIT, and the Governor's Office. Counties have worked on each iteration of the BLM management plans dating back to their inception. Counties officials actively participate as members of WGFD local working groups and the SGIT and, further, implement local regulatory controls in support of Wyoming's EO. The WCCA has is also engaged on behalf of its members in the State's Leadership Team, a government-to-government meeting to discuss implementation.

Our engagement reflects the significance that Greater sage-grouse management has on the health and viability of our communities. Additionally, many counties in Wyoming have a cultural

connection to Greater sage-grouse and the ecosystems wherein they live. Many County Natural Resource Plans have specific Greater sage-grouse policies and priorities and all counties have plans that discuss the multiple-use balance they desire in their communities. Simply stated, Wyoming's counties have a vested interest in the success of Greater sage-grouse conservation in Wyoming.

Greater sage-grouse management has the potential to substantially impact other uses of public, state, and private lands across our counties. By way of example, 99% of federal oil produced in Wyoming takes place within an identified Greater sage-grouse HMAs. Therefore, any management change in the DRMPA can have substantial impacts on other uses and our communities. The WCCA does not see Greater sage-grouse management as just a balance of protections and development opportunities. Done right, Greater sage-grouse management can encourage the use and enjoyment of public lands and increase the viability of sagebrush habitat. This enlarging of the pie for the benefit of all is only possible by working together.

Ultimately, Wyoming counties desire a durable plan that respects state sovereignty, intentionally relies on intergovernmental partnership, balances needed development and protections for our sagebrush ecosystem and the Greater sage-grouse and avoids needless and damaging litigation.

We appreciate your favorable consideration of these comments. If you have any questions, please contact me or, alternatively, Micah Christensen, the WCCA's Natural Resource Counsel, at 307-632-5409 or mchristensen@wyo-wcca.org.

Sincerely,

Bill Novotny, President
Wyoming County Commissioners Association

CC: The Honorable Governor Mark Gordon
The Honorable United States Senator John Barrasso
The Honorable United States Senator Cynthia Lummis
The Honorable United States Congressman Harriet Hageman

Attachment: Consistency Review with Wyoming NRMPs on ACEC-imposed Restrictions by Resource

June 13, 2024

Greater Sage-grouse Land Use Plan Amendments EIS Comments
ATTN: HQ GRSG RMPA
U.S. Bureau of Land Management - Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101

Submitted via Federal eRulemaking Portal
Portal: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning (Federal Register/Vol.89, No. 52/Friday, March 15, 2024/Notices)

Dear Ms. Pat Deibert:

On behalf of the Park County Board of Commissioners (County), please accept this letter as comments for the Bureau of Land Management's (BLM) Greater Sage-grouse (GrSG) Draft Resource Management Plan Amendment (DRMPA) and Draft Environmental Impact Statement (DEIS). The management of GrSG continues to be of great importance to us and working with federal agencies to pursue a balance between Sage-grouse conservation, multiple use of public lands, energy development and the protection of private property is critical to the long-term health of our County and the State of Wyoming.

As a member of the Wyoming County Commissioners Association (WCCA), Park County has been actively engaged in the GrSG RMPA process, today and historically during the 2015 and 2019 plan amendments. In addition, we have participated in the Governor's Executive Order process including the development of Wyoming Executive Order 2015-4 and 2017-2, and most recently the updated Executive Order 2019-3. The County has demonstrated through numerous efforts that we have a vested interest in proactive management of GrSG to prevent a threatened or endangered listing under the Endangered Species Act (ESA).

In Wyoming, counties serve as a legal arm of the state entrusted with carrying out statutory and regulatory goals at the local level. Counties operate at the forefront to ensure our communities are economically vibrant, safe, and healthy places to live and work. Wyoming counties serve as partners and co-regulators of the 18.4 million acres of BLM surface lands and 42.9 million acres of federal mineral estate that fall within our jurisdictional boundaries and uniquely contain varying percentages of federal, state, and private land, which need thoughtful management. Specifically, Park County lands are comprised of approximately 78.3% of *federal surface* including 14% BLM.

Furthermore, as co-regulators, Park County has prepared a Land Use Plan and Natural Resource Management Plan to serve as the basis for communicating and coordinating with the federal government and its agencies on land and natural resource management issues. Wyo. Stat. § 18-5-

208(b). Communication, coordination, and collaboration with the BLM is vital, especially where significant BLM land and minerals exists, and management decisions can significantly impact the regulatory framework, customs, culture, and socioeconomics of our counties.

As partners, Counties work diligently to support the work of our federal land managers to overcome shared challenges and achieve mutual goals. Our counties actively participate with Wyoming BLM field offices and the Wyoming State BLM office on National Environmental Policy Act (NEPA) projects, trainings and presentations, and special initiatives. This proposed Plan Amendment is no exception, as Wyoming counties participated as cooperating agencies in BLM meetings and provided administrative draft comments, where allowed.

In response to this DEIS, Park County submits the following detailed comments for BLM's consideration specific to this plan amendment:

I. General

- State of Wyoming – Park County endorses, and incorporates by reference, comments submitted by the State of Wyoming.

- Wyoming County Commissioners Association (WCCA) – Park County endorses, and incorporates by reference, comments submitted by WCCA.

II. Support for the Wyoming GrSG Executive Order 2019-3 (EO) and State Alternative

Park County has gone on record numerous times, strongly supporting BLM's alignment with the Wyoming EO to the greatest extent possible. Park County believes the steps taken by the BLM in the past to align with the EO is critical to successful population and habitat management. Further, coordinating and combining resources between the state, local governments and federal agencies ensures the success of long-term management approaches that benefit the species.

The creation of the Sage-grouse Implementation Team (SGIT), an on-going process occurring between a cross section of stakeholders representing a multi-jurisdictional, cross-governmental and citizen-inclusive collaborative working group, focused on developing a satisfactory management strategy to protect GrSG and its habitat. The regulatory framework ultimately developed by SGIT and incorporated into the Wyoming EO resulted in the support of the United States Fish and Wildlife Service (USFWS) as a regulatory mechanism that would in fact protect long-term viability of Sage-grouse habitat and Sage-grouse populations; thereby, avoiding a listing under the ESA.

Wyoming has worked diligently to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. Many of the issues BLM is now readdressing in this latest series of NEPA analysis includes: Priority Habitat Management Area (PHMA) mapping, habitat objectives, approaches to minimizing surface disturbance in PHMA, effects of livestock grazing, mitigation strategies including compensatory

mitigation, mitigation recommendations for fluid mineral development within PHMA and General Habitat Management Area (GHMA), wild horse and burro management, adaptive management prescriptions and strategies for short-and-long term monitoring, which are all addressed in depth by the Wyoming EO.

BLM should continue to join Wyoming in supporting this EO and the regulatory framework as being the most effective for protecting the species and its habitat and allowing for a flexible strategy addressing changing conditions in a timely manner.

To this point, the State of Wyoming submitted a proposed State Alternative to be analyzed in this DEIS, which provided consistency with the EO. BLM failed to incorporate that proposed state alternative in the analysis as stating it was submitted to BLM too late in the process to be included as a stand-alone alternative. The County strongly encourages BLM to include or acknowledge the State's Alternative in the Final EIS with a sufficient explanation as to why it was not addressed in the analysis to date.

III. Cooperating Agency Process

The cooperating agency process was not without disagreement or frustration as our opportunity to engage with the federal agency, as outlined by the Counsel of Environmental Quality's (CEQ) NEPA regulations and was written into our MOUs, was ignored by the BLM. When these conflicts arose, Wyoming counties did everything in our power, and in accordance with our MOUs, to raise concerns expeditiously to resolve issues, as expressed in our candid conversations and frank letters.

While the DRMPA expresses numerous successes for cooperation throughout the process, there were certainly places that could have been improved. We also realize that the BLM is generically referred to, however, it must be clarified that this process was not run by the Wyoming state office but rather BLM Headquarters. This enlarged scale may be partly to blame for process failures during the cooperating agency process.

Unfortunately, Wyoming counties were powerless in directing how the BLM ran its cooperating agency process and meaningful opportunities for participation in the amendment process were far and few between. In an attempt to remedy this problem, Wyoming counties verbally requested improvements and sent numerous letters asking the BLM to improve the cooperating agency process and work in good faith with cooperators.

Our first letter in June of 2023 asked the BLM to develop a regular schedule of meetings (previous meetings were sprung on cooperators with minimal notice), to provide documents to review before the meetings, and to have the individuals at the BLM actually in charge of drafting the documents in the meetings. BLM did set up regular meetings and invited members of BLM HQ to participate, but documents were not shared with cooperators in advance of ,or after, the meetings.

Our second letter in August of 2023 requested the BLM follow its MOU which detailed how cooperators would be assisting in the determination of the purpose and need, development of the alternatives and management prescriptions, along with an estimation of effects of implementing

each alternative. Up to this point, cooperators had only been used as editors of small portions of the management prescription tables (never impact analysis), without having the benefit of previously discussing the management prescriptions in a cooperating agency meeting.

The Western Governors' Association (WGA) wrote a similar letter to the BLM outlining concerns that it had with the mapping process, the lack of inclusion of state plans as separate alternatives, and inconsistent information shared to members of its taskforce. This letter prompted the BLM to engage the WGA Taskforce in cooperating agency meetings. While a positive development for Taskforce members, counties serving as cooperators were not invited. Additionally, it became clear that the BLM was treating the Taskforce differently as it began to share many of the documents requested by counties with the Taskforce, albeit with a disclaimer "that these documents not be shared beyond the SG Task Force."

Our third letter in December of 2023 expressed our exasperation of being given an administrative draft, most of which we had never seen or discussed, to review over the Christmas Holiday. This was the first time that any information concerning the environmental or socio-economic impacts from the range of alternatives was provided to cooperators. Unfortunately, the BLM administrative draft was largely incomplete, inconsistent, and had several sections that were simply incorrect. Specifically, it lacked impact analysis for an entire alternative, it presented erroneous acreage figures and tables for Wyoming, and was woefully inaccurate in its description of socioeconomic impacts from fluid mineral leasing and development.

The BLM acknowledged these errors and promised Wyoming cooperating counties a second review of an updated draft of the socioeconomic sections before the release of the public draft. The BLM failed to uphold this promise and cooperators were never shown updated socioeconomic information before the draft went public.

IV. Consistency with Park County Natural Resource Management Plans comprehensive land use and/or zoning plans

The Federal Land Policy and Management Act (FLPMA), which governs the BLM, provides detailed requirements for "coordination" and "consistency" with local government land use plans. FLPMA states:

> To the extent practical, the BLM must stay apprised of local land use plans. The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration. To the extent practical, the BLM must assist in resolving inconsistencies between local and BLM land use plans. The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. 43 U.S.C. § 1712(c)(9).

There is no indication in the DEIS that BLM was apprised of local land use plans or assured that those plans were given consideration as required by FLMPA. Nowhere in the DRMPA does the

BLM even quantify the local plans within the amendment area, not to mention, assure those plans are given consideration. At a minimum, the BLM should include a list of the local land use plans that are within the amendment boundary. For further assistance, Park County has attached its Land Use Plan, dated March 19, 2024, in its entirety for your consideration.

FLPMA also requires that within the environmental consequences section of an EIS, the BLM include a discussion of all "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(a)(5). Further, where any inconsistency exists, the BLM is required to provide a statement describing "the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d). An RMP may be inconsistent with local plans only where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and regulations applicable to public lands. *Id.*; 43 C.F.R. § 1610.3-2(a).

There is no discussion of possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. Not only does this discussion concern local land use plans, but the BLM must also discuss the conflicts with its own mandates and laws. Specifically, it should discuss the obvious conflicts present in Alternative 3 with its multiple use and sustained yield mandate.

The BLM seems to suggest it does not need to do additional consistency review when it states on page ES-12: "Some counties identified their preference for management actions from one alternative or another. It is important to note that these preferences did not specifically cite state or county plan, program, or policy language."

This statement is false and should be removed from the DRMPA. Counties and the State of Wyoming both provided verbal and written comments and identified preferences of management actions based on the State's EO and county plans, programs, and policies. To the extent that additional citation or specificity was desired, the BLM should have asked for it and provided an opportunity for cooperators to provide it.

The DEIS rightfully acknowledges on page 1-12 that "BLM RMPs be consistent with officially approved or adopted resource-related plans of other Federal, State, local, and Tribal governments and policies and programs contained therein, to the extent that they are consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands." However, the DEIS does not address inconsistencies with local plans but instead, claims that the BLM will identify inconsistencies in the Final EIS after receiving comments from state and local government agencies.

Park County believes that the BLM's approach of waiting until the final stage to address inconsistencies in the EIS is flawed. This delay prevents state and local government agencies from providing input during the drafting phase, which could have led to substantive comments that might alter the project's components and subsequent analyses. A federal agency should not address consistency solely by responding to concerns raised through comments. Instead, the BLM should have taken an active approach in identifying inconsistencies and addressing them in the DEIS. It is clear that the process by which BLM included a thorough consistency review of the Park County

local natural resource plan fell far short of adequate and examples of specific inconsistencies will be detailed in this letter below.

IV. Disturbance Caps

The County recognizes the importance and necessity of establishing appropriate disturbance caps to ensure that disturbance to an area does not exceed tolerance levels of the GrSG. The Wyoming State Legislature, federal, state and local agencies, industries, conservation organizations, and landowners have dedicated significant time and resources to conserve GrSG populations in the State. We have shown the capacity and authority to protect and manage the species and its habitats on all lands by establishing oversight mechanisms and implementing protection measures, including developing a disturbance cap using the Density Disturbance Calculation Tool (DDCT). The DDCT establishes a disturbance cap of 5% for suitable GrSG habitat per an average of 640 acres over the entire DDCT assessment area.

To align with the State's EO for GrSG management strategies and to facilitate prompt calculations of disturbance areas, the County suggests that Wyoming be exempt from the 3% HAF fine scale disturbance cap, regardless of the chosen alternative under the EIS. While the BLM would still be able to gather and quantify whatever disturbance data it chooses, the 3% HAF fine scale disturbance cap should not be another disturbance calculator for permit authorization.

Currently, the disturbance levels in Wyoming, including those from fire and agriculture, are well below the 3% cap, making the requirement to meet this cap largely redundant and an inefficient use of time. Moreover, since the 3% HAF fine scale disturbance cap overlooks disturbances from fire and agriculture, which the DDCT includes, utilizing the DDCT for calculating the disturbance cap offers a more inclusive and simpler approach.

As stated earlier, the County supports the Wyoming EO including the utilization of the 5% surface disturbance cap along with the DDCT process, which has proven to be a sufficient management tool of surface disturbing activity within PHMA (core) habitat.

Additionally, the introduction of two disturbance caps could eventually lead to scenarios where one cap is met but the other is exceeded. The DEIS lacks clarity on how the BLM would manage such situations, potentially opening the door to disputes and outside legal challenges. Park County is concerned that any perceived discrepancy between the two disturbance calculations could fuel litigation from parties with the intent on halting the permit process. Clarity is key.

If the BLM proceeds with dual disturbance caps, the County would expect the agency to honor its verbal commitment made at the SGIT public meeting on May 29th, 2024, to engage with the State of Wyoming when discrepancies between disturbance caps arise.

Ultimately, by adhering to the established DDCT 5% disturbance cap, the BLM would not only effectively safeguard the habitat of the GrSG from excessive disturbance but also circumvent unnecessary project delays that could stem from additional coordination and potential litigation.

V. Grazing Management Objectives

Agriculture and livestock production in the County is necessary for the economy, its tax base, and the livelihood of the ranching/farming businesses and related industries. It is also vital to the well-being and continued health of natural resources on federal, state, and private lands. The range production of livestock and livestock grazing are management tools that are used to maintain and enhance the rangeland resource, which benefits watersheds, wildlife, water quality, and recreation, as well as providing needed forage for sustaining livestock production and wildlife habitat. Livestock grazing has been a major industry in Park County since early settlement and continues to be a vital part of the custom and culture of the County as well as an economic driver.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 66-67 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- Livestock Grazing Resource Management Objectives –
  A. Park County supports responsible agriculture businesses, livestock grazing, and rangeland management for sustained and continued preservation of open space, habitat, working landscapes, historic customs, and economic viability.

- Livestock Grazing Priority Statements –

a. Encourage development of federal and state land use and management plans that contain a thorough evaluation of agriculture, incorporating standards and objectives that sustain agricultural interests, where appropriate.
b. Support fencing strategies that enhance the ability of permittees and other agricultural interests to keep their operations financially viable, and reduce or otherwise mitigate risks to the health, safety, and general welfare of wildlife and the public.
c. Park County seeks to be consulted or a CA in any discussions that modify existing grazing allotments, AUMs, or allotment management plans on state and federal lands.
d. Support a permit renewal process that considers active and adaptive management actions and practices proposed by the permittee that manage forage and vegetation to benefit the Natural Resource Management Plan for State and Federal Lands in Park County, Wyoming 67 ecological site as a whole or address a specific vegetation management objective.
e. Support the development and use of new technologies, monitoring techniques, and range management practices in federal grazing authorizations, and request that all options be considered before making permanent reductions in authorized stocking rates.
f. Support the use of current site-specific soils and ecological site data, as developed by NRCS, to create appropriate objectives for livestock management.

g. Support grazing rest prescriptions related to wildfires or prescribed burns that will be determined on a site-specific basis and be dependent on post-fire monitoring. Post-fire grazing will not be limited when post-fire monitoring and subsequent evaluation produces relevant data that demonstrates that grazing will not unduly harm the long-term sustainability.
h. Encourage the improvement or development of range improvements.
i. Support the review and incorporation of monitoring or baseline data, collected by a permittee or qualified team, for use in management decisions by federal agencies

In addition, Park County encourages BLM to be consistent with the BLM Land Health Standards LHS) and specifically Standard 4 which addresses special status species management (SSS). Furthermore, the management prescriptions pertaining to livestock grazing identified in Chapter 2 (page 2-104, Table 2-12) of the DEIS should be made consistent in Chapter 4 and throughout the entirety of the document.

Specific to Adaptive Management (AM) and grazing in Alternatives 3-6, BLM has removed livestock grazing from the narrative and embedded it in the alternatives table in Chapter 2. The language in the alternatives table for AM is not consistent with current BLM rules and regulations, nor is it consistent with the Alternatives for Livestock Grazing in Chapter 2.

BLM should allow for grazing to be included in the AM process and be consistent with existing alternative language. BLM uses the terms "causal" and "contributing factors" incorrectly. Livestock grazing must be identified as a significant causal factor for LHS SSS before any modifications occur to a livestock grazing permits or leases. The County requests that the following language be considered in the alternatives: Specific to GrSG habitat, manage livestock grazing in a manner that 1) meets or makes progress toward meeting the Land Health Standard for special status species, and applies the guideline that addresses "restoring, maintaining, or enhancing habitats of...special status species to promote their conservation." (43 CFR Part 4180.2(e)(9))

Moreover, under Alternative 3, BLM analyzed for a "no grazing" alternative for all states stating "...Because PHMA would be unavailable for livestock grazing, no overarching livestock grazing objective would be needed." This alternative is economically and technically unfeasible to implement as it is in violation of the Taylor Grazing Act. The most appropriate action, as identified by the CEQ NEPA Regulations, would have been for BLM to consider it and eliminate it from further analysis as it does not meet the standard of alternatives that should be analyzed as "technically or economically" feasible. The County is strongly opposed to a "no grazing alternative" in any form.

Regarding fencing, the County generally supports wildlife friendly fencing; however, BLM must coordinate with the applicable grazing lessees should the removal of fencing be considered as those decisions could impact grazing allotments and management of the resource. Finally, any changes in grazing management should consider effects to the adjoining private or state lands as this could impact grazing management practices.

As demonstrated, agriculture production and livestock grazing are significant for the Counties. Not only do they provide an important tax base, the industry is a historical part of the local custom and culture. In the preferred alternative, the County supports the maximum amount of animal unit months (AUMs) being available for livestock grazing on BLM lands in PHMA and GHMA.

VI. Mitigation

Wyoming remains committed to working with its federal partners to develop a mitigation strategy that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. While BLM must adhere to its mitigation hierarchy (avoid, minimize, rectify, reduce, compensate), the County encourages the federal agency to work with the State of Wyoming by following the well-founded principles in the EO regarding adaptive management and the mitigation framework which includes steps for requiring compensatory mitigation. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner and provides regulatory certainty for all parties involved.

VII. Private Property Rights

As stated earlier, Park County is rich in federal resources as our lands are comprised of approximately 78.3% *federal surface* including 14% BLM. Farming, ranching, energy development, tourism and recreation contribute heavily to the heritage of the County. Rangeland used by livestock and agricultural producers continues to be the dominant land use and federal agencies should consider the effects their decisions will have on neighboring private lands.

Furthermore, access to, or restrictions from, crossing federal, state, or county managed lands should not entail encumbrances or constraints on private property. Private property rights are the cornerstone of our County and must be protected to ensure that our continued customs and culture remain intact. When an agency decision or proposed action will have a negative impact to the current use of neighboring private lands, that federal undertaking may not be supported by the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 3, 14, 24, 32, 47, 52, 57, 64, 65, and A-1 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

Park County is particularly concerned about the failure of the DRMPA from analyzing the effects on neighboring state and private lands in the analysis area. Whether described as adjacency effects or cumulative effects, in a state where the BLM manages approximately 18 million surface acres and 41 million subsurface acers (66% of the state), there are substantial impacts to private and state lands across the decision area.

Management and ownership patterns lack uniformity creating a complex and interwoven mix of state, private, and federal minerals that are often "coproduced." The scale of coproduction can vary in degree and can be described in several ways. First, oil and gas can be

coproduced by an individual wellbore that crosses through and produces the varying mineral estates. Second, oil and gas can be coproduced inside a drilling and spacing unit, where specific production is pro-rated to the percent of ownership in the drilling area. Finally, oil and gas can be coproduced across the entirety of a company's development play.

Oil and gas companies, like any other enterprise, must take into account risk/reward, scalability for cost saving, future development potential, infrastructure needs, and regulatory regimes. Operators prioritize areas for development where they can maximize returns and reduce risks. In the current phase of development in Wyoming's Powder River Basin, operators have large swaths of development to minimize risks, provide operational flexibility, and cost share infrastructure.

Even where a wellbore doesn't penetrate federal minerals in a particular drilling and spacing unit, gathering lines, pipelines, transmission lines, and roads to get product to the market inevitably run into federal management at some juncture. Therefore, ROW and surface occupancy restrictions have significant implications for private and state lands and minerals.

This analysis needs to be included in DRMPA. The BLM should acknowledge and analyze the cumulative effects of restrictions on the socioeconomics of our communities. The BLM's socioeconomic analysis should describe the human interests and values shaping public lands management, identifying effects of proposed actions on communities and economies, and promote the economic and social sustainability of communities near public lands.

VIII. Adaptive Management

Wyoming has worked diligently with its federal partners (BLM and USFWS) to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner.

Under Wyoming Statute § 23-1-103, "...all wildlife in Wyoming is the property of the state..." and the Wyoming Game and Fish Department (WGFD) has the legal responsibility for carrying out the purposes of this act. Using the best available science in the Adaptive Management process is necessary to continue long-term healthy populations of GrSG. Recognizing the WGFDs expertise, the State's Adaptive Management strategy places the responsibility of conducting annual population data squarely with the state agency. It is imperative that BLM recognize the WGFDs authority and expertise in this process. The County implores BLM to defer to the WGFD regarding any data collection or management decisions that pertain to the population trend analysis of GrSG within the boundaries of Wyoming.

IX. Wild Horses

In 1971, Congress enacted the Wild Free-Roaming Horse and Burro Act (Public Law 92-195), which guides the management, protection and control of wild horses and burros on federal lands

managed by the USFS and BLM. Herd Management Areas (HMAs) were established in ten Western states based on the existing populations during the passing of the Act in 1971. This Act also mandates that wild/feral horses and burros are managed in a thriving ecological balance with the land and as part of the natural landscape (USFS 2021b). To ensure wild/feral horse and burro populations remain in good condition and that federal lands are protected from degradation, the growth of wild/feral horse and burro herds must be actively managed.

Population control is necessary to protect fragile ecosystems, balance shared use of resources by wildlife, and maintain herd health and protect herds from starvation. Park County encourages aggressive wild horse and burro management that will not adversely impact rangeland resources, livestock or grazing, wildlife habitat or resources, soil resources, or other varied land uses.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 57-58 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

The only viable alternative analyzed that appropriately addresses actual management of wild horse and burros is Alternative 3 (page 2-114, Table 2-13). Managing for "zero" Appropriate Management Levels (AMLs) within HMAs that overlap with PHMA and removing wild horses in those areas is the proper land management prescription and is the only realistic method for meeting AML at the implementation level. For the benefit of the GrSG, all available agency tools must be used to support herd management plans that prevent habitat degradation and native wildlife displacement, including the removal of all wild horses and burros from PHMA.

The State of Wyoming submitted alternative language for wild horses that based any removal of HMAs on whether wild horses were the causal factor of range degradation for a certain period of years. While substantial evidence already exists, that wild horses cause significant range damage and negatively impact GrSG, Wyoming's recommended approach would have been more economically, politically, and scientifically defensible. Unfortunately, this alternative was not properly considered in any of the other alternatives.

X. Lack of Need for ACECs

The WCCA conducted a consistency review on a statewide basis of the DEIS alternatives in relation to ACECs and county natural resource plans, which is summarized in the attached table. In addition to the consistency table, the text below details the concerns regarding the BLM's inadequate and untimely consistency review and the unnecessary designation of ACECs in areas with existing and adequate PHMA designations to manage for and protect GrSG.

An ACEC is defined as "areas within the public lands where special management attention is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a).

A potential ACEC must satisfy a three-part test before it may be designated. First, it must have "relevance," meaning it possesses "a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard." 43 C.F.R. § 1610.7-2(a)(l). Second, it must also have "importance," meaning the relevant values identified in the first step must have "substantial significance and values." 43 C.F.R. § 1610.7-2(a)(2); see also BLM Manual 1613, Section 1 l.B. For the relevance values to meet the "importance" threshold, the area must have "more than locally significant qualities ... compared to any similar resource," have qualities that make it fragile, rare, or irreplaceable, or been recognized as warranting protection to satisfy national priority concerns. BLM Manual 1613, Section 11.B.1. Third, the nominated area must require "special management" "to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish, wildlife, and plant resources, or other natural system or processes." 43 U.S.C. § 1702(a).

Certainly, ACECs can play a role in conservation and special management of historic, cultural, scenic, fish and wildlife resources. However, the BLM has not demonstrated how the addition of the proposed ACECs under Alternative 3 of the DEIS will improve Greater Sage-grouse populations and habitat more effectively than Priority Habitat Management Areas (PHMAs). Under Alternative 3, the DEIS states that the ACECs would be managed similarly to PHMAs, without additional management prescriptions. Park County strongly feels that the designation of ACECs under Alternative 3 are unnecessary given that they will be managed exactly the same as PHMAs. The BLM fails to consider how GrSG populations and habitat are already protected under existing management actions and will be further protected by the proposed management actions under Alternatives 3 of the DEIS. A significant example of this failure is the BLM's attempt to layer ACEC designations on top of existing ACECs like in Fremont and Sublette Counties.

Furthermore, ACEC designations could allow for excessive regulatory authority in the future for areas that are otherwise considered appropriate for PHMA management. Unnecessary designation opens the door for further impediments to multiple use practices.

Attached to this letter, you will find a spreadsheet that provides a thorough review of inconsistencies between the above-mentioned Wyoming County NRMPs and the proposed ACEC resource management restrictions under Alternatives 3 and 6 of the DEIS.

In addition, the County has identified several inconsistencies between the DEIS and the Park County Natural Resource Management Plans (NRMP) directly affected by the proposed ACECs. For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Page 18 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

Park County strongly opposes the designation of any Sage-grouse ACECs in Wyoming. As discussed earlier in these comments, we have worked diligently as a state to develop a framework that effectively manages for GrSG populations and its habitat and no new ACEC designations are warranted nor will they provide any additional protections not already in place.

XI. Fluid Mineral Development and Leasing Objective

Likely the most substantial direct impact to local government revenue in Wyoming is the management prescription for oil and gas development. Consequently, it is vital to correctly capture existing development and the Reasonably Foreseeable Development Scenario (RFDs). The RFD is even more important to get correct when it is comparing the potential impacts from wildly inconsistent alternatives. If poor or incorrect data is utilized to develop the RFD, then the RFD and resulting socioeconomic analysis will be flawed.

Certain portions of the BLM's description and analysis of existing oil and gas could be improved. For example, on 12-38 the BLM reports 9,127 wells have been "drilled" in Wyoming between 2013 and 2023. However, this figure includes workovers and wells that were never completed, which may capture wells that were never actually "drilled." The section properly includes data from the Wyoming Oil and Gas Conservation Commission, which reflects a total of 6,455 unique well spuds in Wyoming between 2013 and 2023. However, the fact that the state's number is 30% less than the BLM's number reflects a poor attempt to gather and clean-up the data for analysis.

On page 12-39, the DRMPA states that 24% of the HMAs in Wyoming are under an existing authorized lease. Additional data that should have been reflected in the DRMPA and clarified in this section is the number of leased acreage currently under litigation in Wyoming. Without including litigated leases in Table 35, it is misleading to members of the public that equate "authorized" as available for development.

In order to understand whether the RFD is truly reasonable there should be a greater description of what was utilized for inputs and variables. Table 35 in Appendix 12 would benefit from a better description of the "source" of the data provided in the table. In addition, there needs to be additional description of the table to help clarify whether these projected wells are federal surface and minerals, private/state surface and federal minerals, or mixed minerals and surface, etc.

The "Projected Production by Alternative in the Decision Area" needs to be amended to more accurately reflect the decline curves associated with modern horizontal development in Wyoming. Without any written description or justification, the projection utilizes a record production year in Wyoming as its basis for production over the next 20 years. In other words, the current projections do not consider decline curves of existing and new wells but keep historic production levels constant. However, it must be noted that the only way to maintain that statewide production level as production declines from existing wells is to drill and produce new wells.

The problem with maintaining existing production as a constant in the RFD is that it artificially reduces the negative economic impacts associated with alternatives 3 and 4 reduced projected well development. This is because the weight given to new wells is significantly reduced by the artificial base production of the existing wells.

Under Alternative 3 only 4,284 wells are expected to be drilled in the next 20 years. This is compared to Alternative 1 that projects 14,450 wells drilled in the same period of time. Although alternative 3 projects over 10,000 less wells are drilled in 20 years it only reduces the production of oil by roughly 224,000,000 barrels and gas by 4,600,000,000 mcf of gas.

Taxes derived from oil and gas development in Wyoming constitutes a significant portion of state and county revenue used to pay for public education and essential services, including roads, fire protection, emergency medical services, courthouses, libraries, landfills, hospitals, law enforcement, airports, recreation, and senior citizen centers. In Park County, oil and gas revenues are $2,100,000 making up 6% of our operational budget.

Oil and gas companies operating in Wyoming are assessed property (ad valorem) taxes by counties and severance taxes by the state. Although they are called "taxes" both are more akin to a royalty because production is taxed regardless of whether an operator makes a profit. Property taxes on oil and gas vary by county and range from 6-7.3% calculated by the gross revenue of the previous year's production and the value of tangible equipment and improvements. Severance taxes are calculated at 6% of gross revenue in the same manner as royalty taxes (gross revenue minus transportation and gas processing cost). Federal Royalties are also deducted from the gross revenue for the purpose of calculating severance taxes.

Property taxes on oil and gas account for over 40% of the total property taxes levied by counties in Wyoming. In 2020, the property taxes collected by counties exceeded $600 million. Additionally, severance taxes collected by the state in 2022 topped $275 million. When adding in federal lease revenues, federal and state royalties, sale and use taxes, and conservation taxes, the industry contributed $1.23 billion in taxes to state and local governments.

Oil and gas development is also subject to sales and use taxes. According to the Wyoming Department of Revenue, 2.6% of Park County's sales tax directly comes from the mineral industry. This does not count the secondary sales tax paid by those companies when they purchase goods from local businesses, making the impact well over 4%. Currently that accounts for over $18,619 a month in revenue to the County.

Furthermore, ad valorum taxes associated with oil and gas production generated an average of over $2,100,000 a year for Park County. This represents over 16% of all property tax paid in the County. A decrease in assessed valuation will affect all County operations including essential services like road and bridge construction and maintenance, investment in IT technology and cyber security, economic diversification investment (water, sewer and streets), fire equipment and personal, and daily operations.

As noted on the Petroleum Association of Wyoming (PAW) website, Wyoming ranked 8th in production of both crude oil and natural gas in 2022 nationally. Further, Wyoming ranked the 2nd largest producer of both oil and natural gas on federal lands, making the state disproportionally affected by national policy changes. According to a 2023 study released by the American Petroleum Institute, in 2021 the oil and natural gas had the following impacts on the Wyoming economy: 58,780 total jobs and $5.7 Billion in labor income.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Page 52 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

Funding derived from mineral development constitutes a significant portion of State and County revenue used to pay for essential services, including roads, fire protection, courthouses and judicial systems, libraries, landfills, hospitals, law enforcement, airports, recreation, public health, and senior citizen centers. Any curtailment of leasing and development activity significantly impacts the socio-economics of the communities and eliminates a critical funding stream for not just our County but all counties, the State of Wyoming and its residents.

Our ability to fund organizations would be negatively affected, which includes but is not limited to, the following: WY Child and Family Development, Children's Advocacy Project (forensic interviewing of sexually assaulted and abused children), Human Resource Council, 'Youth Development Services (Youth Crisis and Intervention Center)', Humane Society, Boys and Girls Clubs, County Fair Boards, Hope Center (Domestic Violence and Sexual Assault Survivors Crisis Center and Shelter), local Libraries, Behavioral and Mental Health Crisis and Intervention Centers, Economic Development organizations and various youth and community recreation organizations. Without County support these organizations will offer fewer public services and could fail and there would be insufficient funds to provide basic services at a level needed for the protection of the county resident's health, safety, and security.

It cannot be stated enough the importance that the oil and gas industry plays in Wyoming. BLM must do all it can to find a balance between GrSG species and habitat protection with continued mineral leasing and development. This balance must be made in consideration of the interwoven land ownership patterns across Wyoming.

XII. Transportation and Transmission Objectives

Public access to routes of travel is essential to the County's transportation and public access systems and to the economic, social, political well-being, customs and culture of the communities. Many private landowners need rights-of-way across state and federal lands to access their property, to use their water rights, and to exercise their grazing rights. Rights-of-ways (ROW) and corridors provide for the development of certain types of infrastructure or facilities that are in the public interest on federal lands for a specified period of time.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 14, 16, 20, 35, 56, of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

Regarding approved access for transportation or transmission within PHMA, the County will support the Wyoming EO and the surface disturbance DDCT process for determining access.

However, we strongly encourage BLM and the state to coordinate and consult with the affected County regarding any planning process or activity that restricts, eliminates, increases, or decreases access to federal or state lands and allow the County the opportunity to resolve any potential conflicts with the County's objectives, principles, and policies, prior to acting.

XIII. Socioeconomics

Economic impacts do matter. Access to federally administered lands and resources are critical to ensure the socioeconomic well-being, custom, culture and stability of our communities. In Park County, lands under federal or state control and decisions made for public land management can directly impact the service and non-service industries, public accessibility, and the demographics of an area. Effective coordination and consultation between the County, federal and state agencies is critical to ensuring that land management agencies thoroughly consider the effects that proposed actions have on custom, culture, and economic stability; conservation and use of the environment and natural resources in the County along with multiple use. Counties receive revenue from federal lands in many ways including mineral leasing and development, agriculture, recreation, travel and tourism, etc. Any curtailment of access to public lands will directly impact the socioeconomics of the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 5-6 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

The County cannot state clearly enough the importance of our ability to access federal lands to drive vibrant economic communities. BLM significantly undervalued the mineral contributions to the counties and state in the socioeconomic section. BLM must include a robust socioeconomic analysis clearly demonstrating the differences between management prescriptions in the Alternatives, which includes impacts to the tax base (royalties, rents or bonus bids, severance taxes, ad valorum taxes, sales and use tax employment income, and direct and indirect employment.) The County can assist in providing the most up-to-date information available for BLMs analysis.

In conclusion, Park County is committed to continuing our engagement as a cooperating agency along with the State of Wyoming, its state agencies and BLM to work through these important issues. We encourage BLM to align with the most recent Wyoming EO, include acknowledgement and analysis of the Wyoming State Alternative and to develop a preferred alternative that takes into consideration our comments submitted herein.

Dossie Overfield

Dossie Overfield, Chairman

CC: The Honorable Governor Mark Gordon
The Honorable United States Senator John Barrasso
The Honorable United States Senator Cynthia Lummis
The Honorable United States Congressman Harriet Hageman

Tom Jankovsky, Chair Pro Tem
District 1

John Martin, Chair
District 2

Mike Samson
District 3

Garfield County

BOARD OF GARFIELD COUNTY COMMISSIONERS

June 13th, 2024

Tracy Stone-Manning, Director
Bureau of Land Management
1849 C Street NW
Washington, DC 20240

Nada Wolff Culver, Principal Deputy Director
Bureau of Land Management
1849 C Street NW
Washington, DC 20240

Re Garfield County, Colorado's comments on the Bureau of Land Management's Draft Resource Management Plan Amendment and Environmental Impact Statement regarding the Greater Sage Grouse

Director Stone-Manning and Deputy Director Culver,

The Garfield County Board of County Commissioners appreciates the opportunity to participate as a Cooperating Agency in the BLM's development of the Draft Resource Management Plan Amendment and Environmental Impact Statement, dated March 15, 2024. As you are aware, Garfield County has been significantly engaged in the development of meaningful and balanced management of the Greater Sage Grouse over the last 24 years with this effort being the 3rd major RMPA since 2015.

It should be noted that Garfield County has continued to approach this issue with a balanced and common-sense mind set knowing that real gains in the bird's persistence occur based on reproducible and informed science as well as "on the ground" efforts at the field-office level with willing private landowners and project advocates on public lands. We believe we've proven to be an authentic participant and even a strong partner with the BLM and our colleagues at the Colorado Parks and Wildlife (CPW) particularly as it pertains to understanding the fine-scale accuracy of our habitat in a radically and uniquely variable landscape.

At the outset of these comments, Garfield County does support the BLM's preferred Alternative 5 as a global comment. In doing so, we also offer the following substantive comments that we believe will inform and improve the BLM's development of the final EIS and Record of Decision. As a backdrop to these comments, it is important to note we have participated in good faith and brought a high level of expertise, resources, and relevant contemporary scientific analysis to the cooperating agency meetings resulting in substantial comments that have been largely ignored and gone unanswered. Perhaps the most egregious example of this was the

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BLM's outright censoring of our biology expert regarding concerns with the Targeted Annual Warning System (TAWS) a recording of which can be supplied.

As an additional fundamental issue with the proposed DEIS, we raise serious concerns over what appears to be a jurisdictional conflict between the BLM and state fish & game agencies where the BLM is asserting unfounded authority by employing TAWS to regulate the management of the species which belongs exclusively to the states and not the federal government. In short, the states have primacy on population and triggers, not the BLM. This is reminiscent of the BLM's earlier attempt (2015 RMPA) to inject the US Fish and Wildlife Service (with veto power) as part of a review panel (aka the "Death Panel") in determining whether project proponents on BLM lands were given exceptions, modifications or waivers for their projects. That was struck down because the USFWS lacked any jurisdiction or authority over a non-listed species. In the end, and as discussed in detail based on all its serious flaws, any use of TAWS by the BLM must be advisory at most and not regulatory.

1) **The BLM's proposed use of TAWS will result in jurisdictional overreach.**

It would be highly appropriate for the BLM to acknowledge the jurisdiction and authority of states to monitor, determine population trends, and manage their non-endangered wildlife. We raise this as an issue because, as written, section **2.5.13 Adaptive Management** of Chapter 2 erroneously suggests that, "Both the BLM and the States have a responsibility to use the best available information for assessing whether a habitat and/or population threshold (as described below) has been met, and to work together to address causes." While we recognize the fact that the BLM certainly has responsibility, as a land management agency, for monitoring and managing habitat, we are unaware of any federal law or agreement that mandates the same for wildlife populations, or that states have an additional shared responsibility with the BLM to utilize their untested tool, the Targeted Annual Warning System (TAWS) for adaptively managing Greater sage-grouse. Therefore, we suggest that the BLM revise this section and subsequent passages under Alternatives 3 through 6, to reflect these facts while acknowledging that the cooperative sharing of information among federal, state, and counties can benefit the conservation of wildlife, habitat, and economic opportunities.

The BLM also appears to have overreached in its authority in the adaptive management sections of Alternatives 3 through 6. There, the BLM presumes that TAWS could be used to impose regulatory restrictions on permitting, based on TAWS warnings and before a potential cause could be determined. Furthermore, the BLM would place the burden of proof on state wildlife agencies to prove that a TAWS warning was produced in error. And finally, teams charged with conducting a Causal Factor Analysis (CFA) would contain BLM staff or members chosen by the BLM, with only a single state wildlife agency member participating and no county level expertise at all. This presumes that counties and private land within them are irrelevant to the future conservation of GRSG. We therefore suggest that the BLM revise this section of alternatives to reflect both state wildlife agency expertise and authority, as well as the expertise and authority of county-level land use planning and management, to address questions that arise regarding GRSG habitat conditions, population trends, and local land use planning.

2) **The BLM has failed to mention who decides the outcome on a Causal Factor Analysis (CFA) when there is disagreement among team members, and/or state official and the BLM.**

3) **TAWS is unproven as practical decision-making too for GRSG habitat management.**

Aside from the jurisdictional issues above, the BLM makes a number of unfounded assumptions regarding the utility of TAWS in adaptive management. The most important of these is the fact that the BLM surmises, without any quantitative proof, that TAWS population thresholds can serve as an accurate proxy for habitat conditions for GRSG on BLM lands. Rather than relying on TAWS as a proxy for habitat conditions, the BLM should instead focus its monitoring efforts on specific habitat quality indicators that are within its means and expertise.

4) **The BLM fails to provide proof that Causal Factor Analyses (CFA) can be conducted on-time and within budgetary constraints.**

As a practical matter, the BLM has not presented any evidence of a successfully completed CFA, or why a CFA team could be expected to complete their analysis within the allotted 60 days, or what the cost would be in terms of staff time and budget required. Without this proof of concept and it being accepted by states, the BLM is essentially proposing an unfunded regulatory mandate that exceeds its authority and imposes an unnecessary burden on states, local agencies, and the private sector.

5) **Neighborhood clusters are inherently too small to reliably determine what factors may cause a watch or warning to be triggered.**

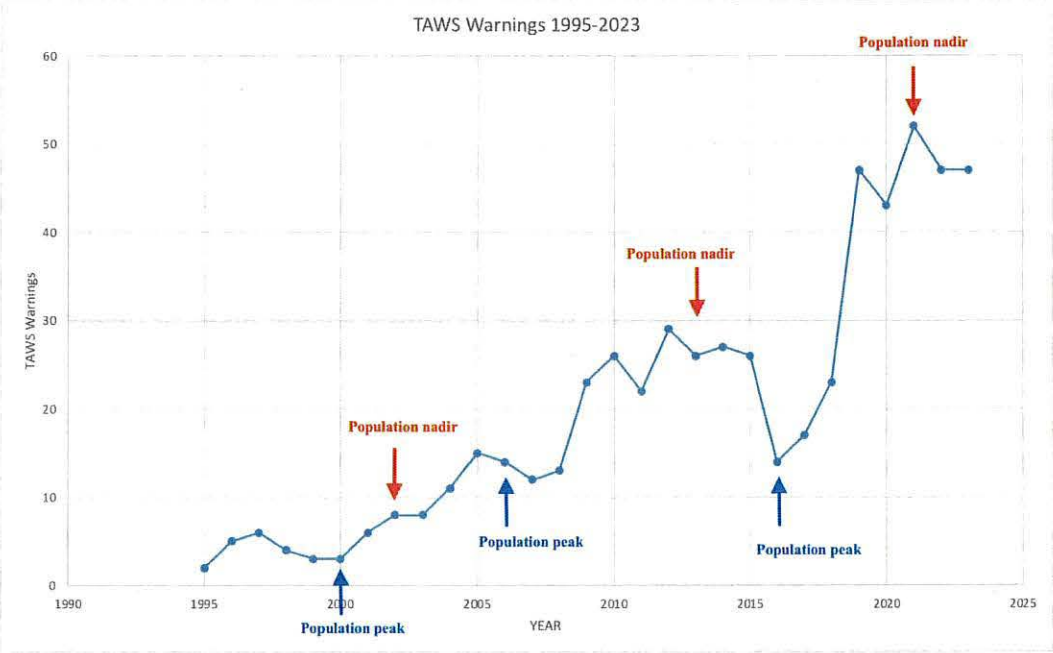
From a technical point of view, we remain unconvinced that the BLM CFA teams will have the statistical power to reliably determine what factors, including false positives, may have contributed to a watch or warning being triggered. That is because the TAWS system subdivides the range of greater sage grouse into 483 separate subunits - referred to as "neighborhood clusters" – with each comprising an area smaller than most counties in the West, and meaning that the sample sizes in terms of leks, birds, and habitat variables will be correspondingly marginal and statistical power in any analysis virtually non-existent.

6) **TAWS is subject to false alarms and may also fail to detect declines when they occur.**

In terms of unnecessary and burdensome false alarms being triggered (i.e., watches and warnings being triggered erroneously), our analysis of TAWS warnings between 1994 and 2022 revealed the following disturbing pattern:

- TAWS warnings became more common during that part of the GRSG population cycle when they were declining naturally and those warnings subsequently disappeared as the population cycled upwards again, and disappeared without any apparent management

interventions. That is a pattern of false positives that is contrary to the BLM's assertion that TAWS is a useful GRSG management tool.



In the figure above, note how warnings increased during declines to range wide population nadirs and decreased in number during natural population increases following a nadir. This indicates that TAWS warnings are not independent of natural population fluctuations and reliance on TAWS will result in the unnecessary expenditure of conservation effort to investigate a considerable number of false alarms, not to mention unnecessary regulatory confusion during those periods. (Range wide population nadirs are from Coates et al. 2021, 2022 and data from Wyoming which closely approximate range wide population peaks. TAWS warning results were tabulated from https://www.sciencebase.gov/catalog/item/637e9b26d34ed907bf76eb1e or https://doi.org/10.5066/P9OQWGIV).

- Due to the fact that false alarms in any field of human endeavor can be costly and burdensome, including those in multiple-use land management, we find it unconscionable that the BLM has not put the TAWS system through a rigorous field testing, including testing to determine causes that may have contributed to the warnings and why they subsequently disappeared. For example, determining whether a warning may have been due to a statistical artifact in the first place, or some other cause. Whatever peer reviews were conducted on TAWS (internal at the USGS or elsewhere) these were inadequate to catch such obvious problems.

- Of the 483 neighborhood clusters, 50 of these are without any results, which means that TAWS is not a range-wide analysis tool.

- As pointed out in cooperator meetings, TAWS neighborhood clusters are not equivalent to "closed population units." Neighborhood clusters are leks created by a connect-the-dots clustering algorithm and biologically unreasonable assumptions regarding the dispersal ability of GRSG.

- The TAWS results that we used in this analysis were requested because they were not found in the USGS's reports or published paper on TAWS, which underscores a lack of transparency surrounding the TAWS methodology, as well as the data used in its calculations.

- To the best of our knowledge, the BLM has not produced any compelling evidence that population trend analyses conducted by states are inferior to their TAWS tool.

7) Two additional, unanswered questions regarding TAWS.

The TAWS tool is still under development and subject to revision as acknowledged by its authors and the BLM. We find that this begs two questions: First, why is the BLM rushing to prematurely release an unrefined, untested, and obviously flawed population monitoring tool to be essentially beta-tested on public lands in live decision-making? Second, why has the BLM not considered multiple layers of data and analyses as a fail-safe against potentially false and costly warnings? For example, detection of changes in vegetation cover determined from remote sensing; and/or regional climate indices that can be used to predict the magnitude of population fluctuations. Both of these can be used to estimate carrying capacity and are within DOI's expertise.

8) Predation threat to GRSG is understated and inadequately addressed in the RMPA.

We find the RMPA addressing of predator impacts on GRSG, and the management of predators such as common ravens, to be weak, outdated and superseded by the recent scientific advances on this subject. More specifically, this body of new science provides insights into the magnitude of raven predation threatening many GRSG populations, as well as more effective management strategies than those considered in the outdated literature cited by the BLM (i.e. Connelly et al., 2000; National Technical Team Report 2012; Hagen 2011). The new science includes research documenting quantifiable demographic impacts of high raven densities on GRSG populations; modeling the outcomes of management scenarios; non-lethal control measures; and provides previously undocumented data on long-distance movements by ravens exploiting human food subsidies (see comments listed in Appendix A for a list of new scientific literature ignored by the BLM). Collectively, these studies document why integrated, landscape-level management of this threat to GRSG is necessary and needs strengthening in this range-wide RMP amendment. In the end, we believe this is a lost opportunity for meaningful improvement to species persistence.

9) Compensatory mitigation should be bonded rather than be completed prior to permitting.

On page 2-145, under alternatives 4, 5 and 6, we take issue with the requirements that compensatory mitigation be completed "prior to construction, surface occupancy, or surface

disturbing activities," and under alternative 4, that "habitat functionality [be]documented" before authorization is granted. These requirements are unnecessarily restrictive and obviously intended to delay or discourage any project that may require a right-of-way. We propose instead that the BLM require a bond to be posted to ensure that the agreed upon compensatory mitigation is completed in full. We suggest dropping the requirement that the compensatory mitigation's "habitat functionality [be] documented," as this is not readily quantifiable and subject to broad interpretation.

10) Mitigation should not be tied to neighborhood clusters.

On page 2-23, under alternatives 3 through 6, the BLM states that, "Mitigation shall be prioritized to occur within the same area of the impact (within the same HAF fine scale area (Stiver et al., 2015, as revised), or if not possible, within the same neighborhood cluster (Coates et al. 2021) to the extent practicable or nearest equivalent HMA designated habitat so that it provides habitat for GRSG populations affected by the project." We suggest that the BLM drop the mention of neighborhood clusters in this requirement because they provide very limited, if any, mitigation opportunities within such a small geographic extent and are therefore unnecessarily restrictive. Additionally, as we have previously commented, there is no sound scientific basis for the BLM to consider neighborhood clusters to be equivalent to "closed populations." Furthermore, GRSG have wings that provide for efficient long-distance flight and have been documented to migrate and/or disperse greater distances than the 15 km inter-lek movement threshold used to define neighborhood clusters in the analysis by Coates et al. (2021). There is also documentation of GRSG dispersing over or around highways, transmission lines, agricultural fields, and oil and gas fields, contrary to the movement "resistance" assumptions utilized in that study (Table 3 of Coates et al. 2021).

On page 2-122, in alternatives 3 through 6, we proposed that the RMPA's Habitat Adaptive Management Thresholds be modified in several ways. First, for the reasons noted above regarding the limited extent and lack of demonstrated biological significance of neighborhood clusters, any habitat threshold units must be on a larger scale than neighborhood clusters (i.e., HMAs or level 3 to 5 clusters (i.e., Coates et al. 2017). Second, the BLM needs to drop wildfire as a disturbance measure, as not all fires burn at the same intensity, duration, or result in uniform habitat abandonment. Furthermore, wildfires are a natural part of the ecology in sagebrush communities, and therefore, should not be viewed in the same ecological context as permanent human alterations of the environment.

11) We fully support, and incorporate here by reference, comments regarding grazing submitted to the BLM on this RMPA by Les Owens from the Colorado Department of Agriculture (dated 13 June 13, 2024).

To these comments we also add that the BLM needs to drop outdated vegetation height requirements. On page 15-4, Appendix 15 the BLM states: "Vegetation structure (height) should be managed so as to provide adequate cover for sage-grouse during the nesting period." We note that this is an outdated grazing and vegetation requirement that has been refuted in the scientific

literature by Smith et al. (2018[1]). Those authors who reported that grass height is over emphasized in evaluating habitat quality because the correlation between grass height and nest success during the nesting season was spurious.

12) The BLM has yet to fully describe and resolve conflicts of this RMPA with other laws and recent regulatory actions.

BLM will need to make significant revisions to address areas where the RMPA conflicts with other ongoing regulatory actions, including the recently adopted Public Lands Rule, other overlapping RMP amendments (including the BLM's draft programmatic EIS for Utility-Scale Solar Energy Development and the analysis surrounding expansion of the 2012 Western Solar Plan), the Endangered Species Act, Wild Free-Roaming Horses and Burros Act (which conflicts directly with GRSG conservation goals), Migratory Bird Treaty Act (especially regarding raven management), and Taylor Grazing Act.

13) Connectivity - Greater sage-grouse are not compromised by a lack of genetic variation or lack of connectivity

As more specifically addressed in Appendix C, the best available empirical scientific data and results show that Colorado populations of Greater sage-grouse are not compromised by a lack of genetic variation or lack of connectivity, currently or in the foreseeable future. Sage grouse are very capable of long-distance movements, which they undertake by flying over or around potential obstacles, using patches of habitat-like stepping stones. Therefore, it is unnecessary and wasteful of conservation efforts for the BLM to embark on a program to "protect" or consider the management of hypothetical connectivity corridors for Greater sage-grouse in Colorado. We urge the BLM to instead focus efforts and resources on demonstrable threats identified from actual data.

14) Previously comments that were ignored by the BLM

We include in Appendix A a list of our previous comments on the Greater Sage-Grouse RMP Amendment Administrative Draft EIS that we provided as a cooperating agency to the BLM on December 29, 2023. Appendix A also indicates whether the comments were ignored by the BLM or incorporated into the current RMPA DEIS. We also provide additional information regarding each comment of substantial significance that was ignored by the BLM. That is evidenced by the letter attached as Appendix B.

We have also attached, and included in our comments here by reference, our February 8, 2024 comment letter to the BLM regarding substantial issues of significance with the "new science" being utilized as a basis for this RMPA DEIS. The content of that letter was similarly ignored by the BLM in preparing the current RMPA DEIS.

[1] Smith et al. 2018. Phenology largely explains taller grass at successful nests in greater sage-grouse: Ecology and Evolution, v. 8, p. 356–364

Conclusion

While we support the BLM's preferred Alternative 5, we raise significant fundamental concerns over the use of the TAWS which is still in its scientific infancy, should only be used in an advisory capacity if at all, and attempts to hand the authority of the species from the states directly to the BLM for population and trigger management decisions.

We also find that the language in the DEIS continues to push a false and negative narrative that grazing is fundamentally detrimental to Greater Sage Grouse and its habitat by placing emphasis on improper grazing. This epiphany is a distinct contradiction from the BLM's assertions in their 2019 Plan and is not supported by science.

We remain concerned about the BLM's insistence of identifying linkages between populations with faulty assumptions regarding connectivity. The best available empirical scientific data and results show that Colorado populations of Greater sage-grouse are not compromised by a lack of genetic variation or lack of connectivity, currently or in the foreseeable future. Additionally, the literature cited and the text describing predation (especially raven predation) are inadequate or severely out of date. Recent literature underscores how serious a problem predation on GRSG nests and chicks has become, such that it is now a local, regional and growing range-wide threat.

We believe the BLM has an opportunity to get this right and these comments are offered specifically to improve the DEIS so that we can begin to see common sense and scientifically supported management tools that make a difference on the landscape. The Greater Sage Grouse does not alter its existence based on property lines. The BLM, state agencies, and counties need to carefully and deliberately assert their management authority such that our private landowners remain engaged partners as they are desperately needed habitat stewards as well as providers of access to scientific data collection. Yet again, a lot hangs in the balance of getting this right with durable land management.

Please do not hesitate to reach out to, Fred A. Jarman, Garfield County Manager, fjarman@garfield-county.com / 970-987-1811 if you have any questions or wish to discuss the content of these comments.

Sincerely,

John Martin, Chairman
Garfield County Board of County Commissioners

Cc The Garfield County Board of County Commissioners
Heather Beattie, Garfield County Attorney
Doug Vilsack, State BLM Director
Diane Mastin Dixon, BLM Sage-Grouse Project Manager

To Whom it May Concern:

As a birdenthusiast I support Alternative 3 for the 2024 Greater Sage Grouse Draft Resource Management Plan Amendment. This would allow for appropriate management of the Sage Grouse habitat our wonderful sage grouse need this to survive.

Thank you for your Attention to this important issue.

Kathleen Hedlund

Kathleen Holland
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GRAND JUNCTION CO 815
28 MAY 2024 PM 1 T

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Submitted via https://eplanning.blm.gov/eplanning-ui/project/2016719/510

June 13, 2024

Re: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning

Dear Greater sage-grouse planning team:

Thank you for the opportunity to comment on the Draft Resource Management Plan Amendments (RMPA) and Environmental Impact Statement (DEIS) for Greater Sage-Grouse Rangewide Planning (89 Fed. Reg. 18,963). Defenders of Wildlife respectfully submits the following comments for your consideration on the DEIS and proposed plan amendments. Defenders of Wildlife is a national conservation organization founded in 1947 and dedicated to protecting all wild animals and plants in their natural communities. In cooperation with our 2.1 million members and supporters, we employ science, public education and participation, media, legislative advocacy, litigation, and proactive on-the-ground solutions to conserve biodiversity.

On May 14, 2024, Defenders and several other organizations submitted detailed comments on the Areas of Critical Concern (ACEC) component of the DEIS and RMPAs. We incorporate that letter by reference. In this letter, we focus on other high priority components of the plan amendments.

Despite the development of the greater sage-grouse conservation strategy and resource management plan amendments in 2015, the greater sage-grouse has continued to decline and still appears to be on the extinction trajectory identified by U.S. Fish and Wildlife Service (USFWS) in 2010 when the Service found that the greater sage-grouse warranted

listing under the Endangered Species Act.[1] According to Coates et al. (2021), between 2002 and 2021, greater sage-grouse have declined in over 87% of its range.[2]

In the 2015 greater sage-grouse plan amendments, BLM's primary strategy was to delineate 32.5 million acres of priority habitat management areas (PHMAs), places that contained most of the remaining sage-grouse and key habitats, and manage them for greater sage-grouse conservation. Specifically, within PHMAs, BLM committed to significantly limit disturbance utilizing an "avoid, minimize, mitigate" framework. BLM has been managing sage-grouse habitat under the 2015 plans for nine years.[3] Over that timeframe, priority habitats have declined in quality and extent. BLM reported an overall 3% loss between 2015 and 2020 driven by conversion to non-habitat and fire.[4]

Defenders analyzed PHMAs in 2023 using publicly available data and found that:[5]

- 16% are dominated by invasive grasses.[6]
- 47% are in substandard condition[7]; 24% have never been evaluated for land health.
- About three-quarters are experiencing chronic drought.[8]
- In the western half of the Sagebrush Sea, invasives and grazing are primary threats. For example, in Nevada, 94% of PHMAs are in substandard condition or have never been evaluated for land health and over a quarter are dominated by invasive plants (27%).
- In the eastern half of the Sagebrush Sea, energy development, grazing and drought are primary threats. For example, in Wyoming, 10% of PHMAs have been leased for

[1] 75 Fed. Reg. 13910 (Tuesday, March 23, 2010).
[2] DEIS Map 3.2 and page I-3.
[3] While BLM amended and weakened the greater sage-grouse plans in 2019, the amendments have been enjoined by a federal court and BLM continues to manage under the 2015 plan direction.
[4] Herren et al. 2021. See e.g., page 48 ("The estimated cumulative loss of sagebrush exceeds 1.9 million acres in PHMAs/IHMAs, representing approximately 3% of the estimated sagebrush available at the onset of monitoring. Approximately 76% of areas capable of supporting sagebrush (BpS) within PHMAs/IHMAs remain in sagebrush communities at the end of the monitoring timeframe, down from approximately 79% of areas in such condition at the onset of monitoring. Regionally, sagebrush loss has been unequal, with the Great Basin Region retaining approximately 69% of areas capable of supporting sagebrush communities in sagebrush (a 4.8% loss) compared to approximately 84% in the Rocky Mountain Region (a 1.9% loss).").
[5] Defenders of Wildlife. Storymap entitled *Protecting the Disappearing Sagebrush Sea*, state-by-state fact sheets on greater sage-grouse habitats, and maps showing the overlap of crucial big game habitat and priority sage-grouse habitat. All are available at https://defenders.org/sage-grouse-action-center.
[6] Based on Allred et al. 2021.
[7] This statistic reflects priority habitats that overlap grazing allotments that failed to achieve land health standards in the most recent land health evaluation. This is based on BLM land health data collected and analyzed by Public Employees for Environmental Responsibility (2020). See https://peer.org/areas-of-work/public-lands/grazing-reform/mapping-rangeland-health/.
[8] County drought data from Farm Service Agency. A county is in chronic drought if it has a drought meter rating of D3 or more within a year for at least three of the last five years.

oil and gas since 2017 and 7% granted as rights-of-way for transmission, pipelines and roads since 2015.

While some habitat drivers are out of BLM's direct control, many are within BLM's control – for instance, energy development, livestock grazing, recreation and roads, and restoration of disturbed lands. Even fire behavior, while clearly affected by climate change, is affected by land management decisions related, for instance, to livestock grazing, vegetation treatments, and recreation.

Multiple scientists with expertise in sage-grouse and their habitat have warned that continuing status quo management will not alter the current extinction trajectory for the species. For example, Doherty et al. (2022) warned that "[s]mall incremental changes to the existing amount of conservation delivery and coordination will likely not abate the expected loss in sagebrush ecological integrity and consequently the loss of sagebrush obligates, such as greater sage-grouse." Similarly, the 2022 *State of the Birds* report that is authored by a consortium of government agencies and NGOs, including BLM, warned that "Greater Sage-Grouse shows a continued steep decline that warrants increased voluntary habitat conservation incentives and renewed strong federal and state protections." The report notes that the greater sage-grouse is at a "tipping point", as scientists predict another 50% of its population would be lost in the next fifty years if nothing changes.[9]

Given the continued loss of greater sage-grouse populations and habitats under the 2015 plans and the warnings by sage-grouse experts, it only seems logical that BLM would use this third round of greater sage-grouse planning to re-examine the 2015 framework and strengthen conservation of habitats and populations across the planning area. Yet, BLM's preferred alternative does the opposite. It adopts most of the changes adopted in 2019 which weakened protections across the range – for instance, by removing sagebrush focal areas and the recommended mineral withdrawals and by weakening protections in the zones around leks, among other things.

We simply cannot see how weakening conservation measures for PHMAs – measures that are already failing to curb declines – will result in anything but further declines. The preferred alternative will not provide regulatory certainty that greater sage-grouse habitat losses will be abated. In the following sections, we provide detailed comments on priority management issues and offer recommendations that will help improve the preferred alternative and impact analysis. The recommendations are focused on protecting the remaining intact habitat and restoring habitats with high persistence and resilience. For the sake of the sage-grouse and the sagebrush ecosystems, BLM should adopt an alternative that is stronger than the preferred alternative by including elements of Alternative 3 which

[9] North American Bird Conservation Initiative, Key Findings, 2022 State of the Bird Report, available at https://www.stateofthebirds.org/2022/tipping-point-species/ (accessed May 4, 2024).

more aggressively limits disturbance in PHMAs. We offer the following recommendations that are described in detail in the remainder of this comment letter:

- Describe the greater sage-grouse conservation approach under each alternative in a clear way so that the entirety of the sage-grouse conservation measures under each alternative are discernable.
- Limit disturbance and fragmentation in sage-grouse habitat:
    - Establish five-mile lek buffer zones within which discretionary disturbances are limited. Recommend for mineral withdrawal lek buffer zones and priority habitat management areas. Close priority habitat management areas and lek buffer zones to oil and gas, geothermal and renewable leasing. If 'no surface occupancy' prescription is retained, only allow waivers, modifications, and exceptions if they yield a conservation gain to sage-grouse.
    - Strengthen protections in general habitat management areas.
    - Lower the disturbance caps across the range to 1% or less. Calculate disturbance caps at the neighborhood cluster scale in addition to the HAF fine-scale and project scale to align with the adaptive management hard and soft trigger assessments. Only consider exceptions when they will result in conservation gains.
    - Eliminate allowances for development in "non-habitat" within priority habitat management areas to prevent additional fragmentation.
    - Strengthen the grazing management framework by assuring accountability for meeting habitat objectives and land health standards and applying grazing exclosures to evaluate the impacts of grazing and inform adaptive management; and commit to a schedule for evaluating land health and grazing authorizations in priority areas.
- Strengthen the adaptive management framework by adding additional thresholds designed to mitigate for continued "acceptable" declines and by limiting new authorizations where triggers are tripped regardless of cause until the triggers are reversed.
- Adopt Alternative 4's habitat management allocations in concert with significantly strengthening protections for general habitat management area and lek buffer zones.
- Update vegetation management plan components to reflect current science by adding the following requirements:
    - Remove sagebrush removal/thinning as an available restoration activity and acreage targets for pinyon and juniper tree removal.
    - Require on-the-ground surveys of pinyon jays and pinyon pines and consultation with tribes before designing or implementing pinyon-juniper removal projects, and consider rangewide health of the specific pinon and juniper ecosystems in question before removal occurs.

    - Adhere to scientifically accepted principles and standards for ecological restoration including requiring native seed supply planning and the use of native seeds.
- Eliminate scientifically unjustified state-to-state differences in sage-grouse management.

We urge BLM to take this opportunity to strengthen sage-grouse management in key areas that will give the sage-grouse a fighting chance. We look forward to continuing to work with the Bureau to address these deficiencies and to conserve the greater sage-grouse and its Sagebrush Sea habitats. Thank you for considering these comments.

Sincerely,

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I. The DEIS is incomprehensible.

To achieve the purpose of informing decisionmakers and the public of potential environmental consequences of a proposed agency action, CEQ regulations require agencies to write environmental impact statements in plain language so that decision makers and the public can readily understand such statements.[10] The proposed alternatives and impact analysis must be intelligible and clearly presented to foster both informed decision-making and public participation. In this case, the no action alternative (alternative 2) is the 2015 sage-grouse amendments (that amended 78 resource management plans across ten states) as modified by the 2019 sage-grouse amendments (that amended most of the once-amended resource management plans). Both the 2015 and 2019 sage-grouse amendments did not apply a one-size fits all approach and instead both varied by state and in some cases by field office (e.g., Montana) yielding a no action alternative that is a complicated patchwork of sage-grouse management direction. The action alternatives (alternatives 3-6) offer another layer of amendments on top of the 2015

[10] 40 CFR § 1502.8.

and 2019 amendments, again with differences across the states and field offices (except for Alternative 3).

Nowhere in the EIS does BLM provide an articulation of the entire sage-grouse management direction for each state and field office under each alternative and instead leaves it to the reader to try to figure out how to piece together the 2015, 2019 and 2024 proposed direction to discern this bigger picture.

By way of example, we wanted to know how the zones around leks (lek buffers) will be managed under each alternative, since conservation of lek buffers are crucial for long-term greater sage-grouse survival. We spent many hours compiling a chart (see Attachment 1) by reading the 2015 amendments, the 2019 amendments and the 2024 proposed management for alternatives 1-6 for each state (and in some cases individual field offices) and even still it is extremely difficult to understand across the range how these crucial buffers will be managed under the six alternatives and the resulting impacts.

It is true that BLM provides Appendix 2 that is 800 pages long and attempts to list the issues implicated by the 2024 amendments and how they are treated under the 2015 and 2019 amendments. The problem with Appendix 2 is that it only lists issues implicated by the 2024 amendments and does not provide an overall articulation of the sage-grouse strategy under each of the alternatives. It also does not specify how each issue is treated in the 2024 amendments but simply says it will not change or it may change under one or more of the action alternatives. The fact that BLM felt the need to provide this extremely long and complicated appendix illustrates that BLM knew that the presentation of the alternatives was incomprehensible.

Readers should be able to clearly understand how greater sage-grouse will be managed under each amendment and the resultant impacts. For the reasons described above, BLM has failed to provide a comprehensible environmental impact statement as required by NEPA.

II. BLM's policy and regulations require BLM to conserve greater sage-grouse and minimize the likelihood and need for listing, and manage for ecological resiliency and conservation within the multiple use framework.

BLM's obligation for managing sensitive species under its special status species policy is to promote species' conservation and to minimize the likelihood and need for listing under the ESA.[11] This obligation is coupled with FLPMA's conservation mandate and implementing regulations at 89 Federal Register 40308 (Thursday, May 9, 2024). These include, among other things, establishing a presumption for the designation of qualified ACECs, protecting intact landscapes, restoring degraded landscapes, using high quality

[11] BLM Manual 6840 Sections .06 and .2.

information in decision-making (including Indigenous knowledge), managing for ecological resilience, and preventing undue and unnecessary degradation.

III. Plans must demonstrate sufficient regulatory mechanisms to prevent habitat loss and modification.

The U.S. Fish and Wildlife Service (USFWS) in 2010 found that the greater sage-grouse warranted listing under the ESA but was precluded by higher priorities.[12] The finding was due to continued loss and fragmentation of habitat exacerbated by a lack of adequate regulatory mechanisms to address habitat loss. The primary drivers of habitat fragmentation identified were renewable and nonrenewable energy development in prime sage-grouse habitats, continued expansion of supporting infrastructure, the spread of invasive annual grasses and associated changes in wildfire regimes, and the lack of adequate regulatory structures to address these impacts. Absent regulatory mechanisms in place to control continued habitat loss and fragmentation, the USFWS determined the sage-grouse was at risk of extinction in the foreseeable future and, therefore, warranted protection under the Act.

In 2015, following the BLM and U.S. Forest Service (USFS) plan amendment process, the USFWS issued a not warranted finding.[13] This finding was largely based on the land use plan commitments made by BLM and USFS in 98 land use plan amendments across the greater sage-grouse range. These included, for instance:[14]

- The protection of 11 million acres of Sagebrush Focal Areas (SFAs) and an accompanying mineral withdrawal recommendation;
- Applying protections to priority habitats that captured about 64% of the sage-grouse breeding areas. These protections included, among other things, closing areas to fluid mineral leasing (or making them No Surface Occupancy or NSO); prohibiting renewable energy development and non-energy mineral leases or sales; requiring compensatory mitigation under a net gain standard; adaptive management framework with triggers and required actions; and a stronger livestock grazing management framework (e.g., prioritizing the evaluation of permits/leases for renewal in important habitat zones and SFAs, and managing to achieve specific sage-grouse habitat objectives);
- Applying protections to General Habitat Management Areas (GHMAs) designed to limit disturbances but in a less restrictive fashion; and
- Applying lek buffer restrictions in PHMA and GHMA.

[12] 12-Month Findings for Petitions to List the Greater Sage-Grouse (Centrocercus urophasianus) as Threatened or Endangered. 75 Fed. Reg. 13910 (Tuesday, March 23, 2010).
[13] 12-Month Finding on a Petition To List Greater Sage-Grouse (Centrocercus urophasianus) as an Endangered or Threatened Species. 80 Federal Register 59,858 (Friday, October 2, 2015).
[14] *Id.* at 59875-59880.

The preferred alternative provides weaker protections than that provided in the 2015 land use plan amendments, captured in alternative 1 in this DEIS. For instance, in the preferred alternative:

- The SFAs and accompanying mineral withdrawal recommendation are eliminated;
- Lek buffers are considered but not necessarily applied;
- In some states and habitat areas, lek buffer zones are reduced (see section below);
- Compensatory mitigation is based on no net loss as opposed to no net gain;
- GHMA protections are very minimal, and the adaptive management framework does not apply to GHMA;
- PHMA protections are weaker (e.g., PHMA that was closed to fluid mineral leasing is no longer closed; renewable energy is no longer excluded; a non-habitat disturbance exception is allowed); and
- The livestock grazing management framework is weaker, with specific performance requirements stripped away.

Adopting weaker protections will put the sage-grouse at even greater risk of extinction.

IV. Plans must adequately address greater sage-grouse biological and ecological needs to meet BLM's responsibilities under FLPMA and to abate greater sage-grouse habitat loss and modification.

Greater sage-grouse require large expanses of healthy and minimally disturbed sagebrush-steppe ecosystems in close proximity to mating, brood-rearing and overwintering habitat. Mating occurs on leks, visible bald areas that are located proximal to relatively high-quality nesting and brood rearing habitat. Females nest within several miles of the leks where sagebrush and grasses protect and hide the nest and forbs and insects provide nutrition. Sage-grouse have high fidelity to their leks. Once the chicks reach a certain size and the uplands begin to dry out, females will lead their broods to nearby wetter areas where insects can provide the necessary nutrition to support chick growth. In winter, birds will migrate short distances to wintering areas where they survive almost exclusively on sagebrush that remains exposed above the snowline. Sage-grouse return to the same lekking areas year after year so long as the surrounding habitat remains healthy. Sage-grouse populations need to intermix genetically and thus connectivity between populations is key. They also avoid places with tall structures where predatory birds can perch to get a better view of chicks and eggs.

Thus, sage-grouse require: 1) minimal disturbance within lek/nesting and brood rearing zones which we define (see below) as the five mile area surrounding the lek (Manier et al. 2014; Coates et al. 2013; Holloran 2005; Knick and Hanser 2011; Gregory and Beck 2014 Apa et al. 2008); 2) larger interconnected patches of relatively unfragmented sagebrush steppe habitats with good forb diversity/abundance, and native bunch grasses at least

generally seven inches high (Doherty et al. 2014; Gregg et al. 1994; Stiver et al. 2015); 3) places free of perches for predatory birds; 3) mesic areas that support brood rearing; 4) wintering areas where sagebrush remains uncovered by snow; and 5) free of unmarked barbed wire fences with which sage-grouse can collide.

The RMPAs must provide these biological requirements today and into the future, taking into account climate change. In the context of sage-grouse, taking into account climate change means reducing anthropogenic stressors (direct, indirect, and cumulative) across the range and especially within a five-mile radius of leks, and protecting habitats that are likely to be the most resistant and resilient.

The following recommendations for changes to the preferred alternative are based on the biological needs of the sage-grouse. As a general matter, differences in management direction between states without a science-based rationale should be eliminated as the basic biological needs of the greater sage-grouse do not vary across political jurisdictions.

A. The preferred alternative insufficiently protects lek buffer zones that are vital for sage-grouse viability.

    1. Science supports the protection of a lek buffer zone that is five miles or greater.

The majority of greater sage-grouse are located within several miles of leks where nesting and brood-rearing habitat is present (Manier et al. 2014; Holloran 2005) and greater sage-grouse have high fidelity to the leks, which makes protecting leks and the surrounding nesting habitat paramount for greater sage-grouse survival. Manier et al. (2014) summarized the scientific literature on lek buffer zones and created a summary chart showing a range of values for which various disturbances were found to be damaging to sage-grouse nest success, productivity, and/or abundance. The median interpreted range for the zone in which disturbances would be considerably impactful to sage-grouse is four miles for infrastructure and surface disturbance (except for fences where the median is about two miles). The literature maximum for seeing population effects from disturbances was 11-12 miles. Manier et al. warn that for some populations, larger lek buffer zones are necessary and that the interpreted distances do not capture the entirety of the local population's habitat utilization.

> [H]ome ranges as large as 2,975 km^2 (1,149 mi^2) have been documented (Connelly and others, 2000, 2004) in some portions of the species' range. These larger distances suggest that for some populations, the minimum distance inferred here (5 km [3.1 mi]) from leks may be insufficient to protect nesting and other seasonal habitats. Based on the collective information reviewed for this study, conservation practices that address habitats falling within the interpreted distances may be expected to protect as much as 75 percent (Doherty et al. 2010) to 95 percent (Coates et al. 2013) of local population's habitat utilization.

Holloran (2005), for instance, found that 64% of monitored nests were within 3.1 miles of a lek. Kirol (2020) found that ongoing surface disturbance from energy development within 8 km (4.97 miles) of a greater sage grouse nest decreased the likelihood of nest success.

BLM in 2015 adopted lek buffer zone distances (with exceptions) that aligned with the lower end of the interpreted range which left crucial nesting and brood-rearing habitat vulnerable to disturbance. The lower end for surface disturbance, linear features, and energy development is 3.1 miles; for tall structures it is 2 miles and for low structures it is 1.2 miles. Since 2015, however, sage-grouse populations have continued to decline.

It is clear from the literature that applying the lower end of the interpreted range leaves crucial habitat unprotected. Given that some studies found population effects far exceeding the median of the interpreted range and given the fact that greater sage-grouse populations continue to decline over much of the range, adopting the higher end of the interpreted range – five-mile lek buffer zone -- is prudent and likely necessary. Hence, in this section, we define the lek buffer zone as a five-mile radius around the lek. When we refer to leks, we are referring to active and pending leks, as defined in the DEIS.

2. Lek buffer zones are inadequately protected in the preferred alternative to curb the greater sage-grouse's decline.

The DEIS does not explain how lek buffer zones are managed in PHMA and GHMA, and outside of these habitat areas does not analyze the effects under the alternatives to the lek buffer zones. To figure this out, we had to re-read the 2015 RMPAs, and together with scattered information in the DEIS, piece together how these biologically crucial habitat zones are managed across the range (see Attachment1). Our best understanding is that under the preferred alternative, they are managed as follows:

- In regard to the U.S. Geological Survey (USGS) lek buffer recommendations, Nevada, California, Colorado, Wyoming and sometimes Utah are no longer bound to "apply" USGS lek buffer recommendations (Manier et al. 2014) and instead are now required only to evaluate impacts from proposals within the USGS lek buffer distances (lower interpreted range). In Idaho, USGS lek buffer distances will apply but at "Literature Minimum" distances. Oregon, Montana and the Dakotas will apply the lek buffer distances (lower interpreted range). Oregon prohibits disturbance within one mile of leks in PHMA and GHMA, but exceptions are allowed. Wyoming does not adhere to the USGS lek buffer recommendations and prohibits disturbance within 0.6 miles of leks in PHMA and 0.25 miles in GHMA, but exceptions are allowed.
- For oil and gas leasing in PHMA, 0.6 mile lek buffers are 'no surface occupancy' (NSO) with an exception considered, and beyond 0.6 mile the remaining lek buffer zone is NSO with waivers, with exceptions and modifications (WEM) and non-habitat exceptions -- except for Wyoming where beyond 0.6 miles, oil and gas

leasing is not NSO. In GHMA, Montana, Dakotas, Wyoming, and possibly Utah have a small zone (0.25 to 0.6 miles) around leks where a NSO stipulation with WEM is applied while Colorado, Idaho, Nevada, California, and Oregon do not appear to have a NSO buffer around leks.

- All lek zones are open for hard rock mineral location and entry.
- For non-energy leasable/saleable minerals in PHMA, lek buffer zones are generally closed except in Wyoming where mining is prohibited within 0.6 mile. In GHMA, there are no prohibitions except in Wyoming where disturbance around leks is prohibited within 0.25 miles with exceptions, and in Oregon where disturbance is prohibited within 1.0 mile of leks, with exceptions.
- ROWs should be avoided in PHMA around leks and state-specific lek disturbance prohibitions apply. ROWs in GHMA are managed as open to minor ROWs except for Montana and the Dakotas where ROWs should be avoided when possible within 1.2 miles of active leks.
- For roads and travel management, routes are generally limited to existing tracks and some open areas for motorized use. In PHMA, Colorado prohibits new roads within 1 mile of a lek. In Wyoming, new local or collector roads will be avoided within 1.9 miles of the perimeter of occupied sage-grouse leks, and all new roads will be prohibited within 0.6 miles of the perimeter of occupied sage-grouse leks. In Oregon, upgrading of primitive roads within four miles of a lek is prohibited.
- For renewable energy, PHMAs are avoidance areas except in Idaho where it is prohibited within lek buffers and in Montana and the Dakotas it is prohibited within 2 miles of active leks. In GHMA, there are no lek buffer protections.
- For livestock grazing, there are no specific lek zone requirements.
- Outside of PHMA and GHMA, there are no lek zone protections or requirements.

Based on our analysis under the preferred alternative, the majority of the acreage within lek buffer zones will not be sufficiently protected from anthropogenic disturbances. Across much of the range, BLM will no longer apply the Manier et al. (2014) buffer zone distances (lower end of the interpreted range) and in key parts of the range, such as in Wyoming, BLM is proposing extremely weak lek buffer zones in contradiction to numerous scientific articles (Hess and Beck 2012[15]; Holloran and Anderson 2005[16]; Coates et al. 2013[17]; Kirol

[15] Found as number of oil and gas wells within 0.6 miles of a lek increased the likelihood of lek abandonment.
[16] Found the average movement distance from the lek to nest site was 2.9 miles in Wyoming and a 1-mile buffer contained only about 25% of the nest sites.
[17] Suggests a 3.1 mile and 4.7-mile buffer distance around leks is necessary, for non-migratory and migratory Greater Sage-Grouse populations respectively. A one-mile buffer around nearest occupied lek contained only 50% of utilization distribution (all seasonal habitats including spring, summer, fall and winter).

2020; Green et al. 2017; Apa et al. 2008[18]; Gregory and Beck 2014[19]). Protections are better in PHMA; in GHMA they are weak to non-existent and outside of GHMA there are no special protections.

3. There is no justification for differences in the management of lek buffer zones across state and field office boundaries.

The biological needs of the greater sage-grouse do not vary across states and field office boundaries and thus the management of the biological needs should not vary absent a compelling argument for each deviation. The DEIS does not provide a compelling rationale for the differences in the treatment of the lek buffer zones across political and land management jurisdictions.

4. The DEIS does not take a hard look at changes to the management of lek buffer zones across the alternatives.

The DEIS fails to reveal how lek buffer zones will be treated under each of the alternatives, which is a significant deficiency given how crucial protection of the lek buffer zone is for the persistence of greater sage-grouse and achievement of the BLM's greater sage-grouse management goals. BLM fails to disclose the effects of adopting new lek definitions in the DEIS (e.g., changes in leks receiving some level of protection and associated acres). Additionally, BLM fails to disclose the disturbance within lek buffer zones, including disturbance since 2015 when the first RMPAs went into effect, which is important for evaluating the effectiveness of lek buffers under alternative 1's management scheme.

In conversations with BLM staff, we were told that the reason that the DEIS does not take a hard look is because lek buffer zones are not proposed to change. However, we disagree. Attachment 1 shows where changes to the four-mile lek buffer zone will change under the preferred alternative. The DEIS at 2-WY-15 specifically states that in Wyoming, prohibitions on surface disturbance within 0.6 mile of leks in PHMA and 0.25 miles of leks in GHMA are potentially changed under Alternatives 3-6. Examples of similar text for other states are at DEIS 2-NVCA-20, 2-UT-12 and 17. Further, BLM is adopting consistent definitions for various types of leks (e.g., active, pending, historic pending) and applying conservation measures, where they exist, only to active leks.[20] In doing so, BLM has shifted the number of leks and acres of lek buffer zones subject to protective measures

[18] "Yearling female greater sage grouse avoid nesting in areas within 0.6 miles of wellpads, and brood-rearing females avoid areas within 0.6 miles of producing wells. This suggests a 0.6-mile buffer around all suitable nesting and brood-rearing habitat is required to minimize impacts to females during these seasonal period." This report further clarifies, "These suggest that all areas within at least 4-miles of a lek should be considered nesting and brood-rearing habitats in the absence of mapping."

[19] Significant immediate effects on leks with one well pad within 1.2 miles of a lek and time-lagged effects due to industrial development within 6.2 miles of a lek, indicating a habitat within 5 miles identified here may still experience an influence of development on some landscapes.

[20] DEIS at 2-9.

BLM Needs to rectify these deficiencies in the final EIS; this includes providing a clear summary of the lek buffer requirements—the distances, their applicability to BLM decisions, and the exception criteria—that would apply across the range under all the alternatives.

5. To achieve the stated goal and help curb continued population declines, BLM must establish robust protections to a five-mile buffer around leks.

As discussed above, the best available science says that the five-mile radius around leks are biologically crucial for greater sage-grouse because of their importance for nesting and brood-rearing. Stronger protections to these crucial biological zones are needed if BLM is to achieve its stated goal to "Conserve, enhance, restore and manage GRSG habitats to support persistent, healthy populations, consistent with BLM's Special Status Species Management Policy (BLM Manual 6840)" [21] and provide regulatory certainty for sage-grouse conservation.

BLM should apply the Manier et al. (2014) buffer distances (the higher end of the interpreted range) for infrastructure to all active leks across the range (i.e., in PHMA, GHMA, IHMA and outside of these habitat areas). BLM should also eliminate discretionary disturbances and minimize disturbances that cannot be eliminated within five miles of all active leks. Importantly, BLM must adopt the recommended lek buffer zones across the range for mineral withdrawal. Of all the potential uses, BLM has very little ability to control mining operations and exploration once claims are established.

We also ask that BLM reconsider the exception criteria for lek buffers adopted under the 2019 ARMPAs. For example, the 2019 ARMPAs state that "Justifiable departures to decrease or increase from these distances from the lek where impacts are anticipated, based on local information and data, best available science, landscape features (i.e., topography), and other existing protections (e.g., land use allocations, state regulations), or factors reducing visibility and audibility may be appropriate." This gives field managers concerning levels of discretion to apply lesser lek buffers.

These recommendations are contained within the range of alternatives (within a combination of management prescriptions and habitat management allocations).

B. Delineate habitat management area designations to maximize protection for the most important habitat.

Page 2-12 shows the variation by alternative of PHMA and GHMA acreage allocations. Appendix 3 describes the differences by state in the allocations and mapping approaches. Most states include all occupied habitat with PHMA and GHMA while others (e.g., Utah)

[21] DEIS at 2-10.

leave some occupied habitat unprotected. Just as BLM attempted to make lek definitions consistent, BLM should strive to make habitat management area allocations consistent. Absent this consistency, it is difficult to understand the relative value of PHMA and GHMA across the range and evaluate effects. For example, it is difficult to evaluate how each alternative treats occupied habitat and suitable (unoccupied) given the variance in definitions. See Table 1.

Table 1. Summary of PHMA, GHMA and other habitat management areas for each state under alternative 5. Based on Appendix 3.

State	PHMA definition -preferred alt.	GHMA definition – preferred alt.	Other habitat types
CO	PHMAs have been identified as having the highest conservation value to maintaining sustainable GRSG populations. They include breeding, late brood-rearing, and winter concentration areas.	GHMAs are areas of seasonal or year-round GRSG habitat outside of priority habitat.	
ID	In general, PHMA encompassed high and medium-high BBD (25-50%), large areas of intact, habitat (medium and high HSI, high sagebrush cover (>8%), low tree canopy cover (<30%), and low annual herbaceous cover (<20%)), important connectivity and seasonal habitat, especially winter, as evidenced by telemetry locations, and a lack of disturbance (e.g., fire, anthropogenic features).	GHMA encompassed the lowest quality habitat and BBD (100% or outside the 10km occupied lek buffers) and mesic habitats used in summer (e.g., wet meadows, alfalfa fields).	IHMA serves to connect and buffer PHMA and encompassed slightly lower quality and/or more fragmented habitat, with lower BBD (50-100%).
MT/Dakotas	Areas with limited impacts containing substantial and high quality GRSG habitat that have been identified as having the highest conservation value to maintaining both sustainable sage-grouse populations and the range of GRSG.	Areas with or without ongoing or imminent impacts containing seasonal or year-round habitat outside other habitat management areas, including for the purpose of promoting movement and genetic diversity.	CHMA: Areas that provide regions of connectivity important to facilitate the movement of GRSG and maintain ecological processes, including between priority populations, adjacent states, and across international borders.
NV/CA	Areas that have been identified as having the highest conservation value to maintaining sustainable Greater Sage-Grouse populations. These areas are occupied seasonally or year-round and include breeding, late brood-rearing, and winter concentration areas.	An area that is likely to be occupied seasonally or year-round outside of a Priority Habitat Management Area and where management will apply to sustain the Greater Sage-Grouse populations.	
OR	BLM-administered lands identified as having the highest value to maintaining sustainable GRSG	BLM-administered lands where some special	

	populations. Areas of PHMA largely coincide with areas identified as Priority Areas for Conservation in the USFWS's COT report.	management will apply to sustain GRSG populations; areas of occupied seasonal or year-round habitat outside of PHMA.	
UT	Hard to tell exactly. Alt. 5 is a modification of the 2015 definition: BLM-administered lands identified as having the highest value to maintaining sustainable GRSG populations. Areas of PHMA largely coincide with areas identified as Priority Areas for Conservation in the USFWS's COT Report. These areas include breeding, late brood-rearing, winter concentration areas, and migration or connectivity corridors.	Hard to tell exactly. Alt. 5 is a modification of the 2015 definition: BLM-administered lands where some special management will apply to sustain GRSG populations. Areas of occupied seasonal or year-round habitat outside of PHMA.	25 occupied leks are outside of HMAs
WY	GRSG habitats that have the highest conservation value for maintaining or increasing GRSG populations.	all occupied and potential GRSG habitats not designated as PHMA or SHMA.	SHMA: GRSG habitats that are generally characterized by large percentages of private land, existing disturbance and prior and existing rights, and fragmented landscapes but that continue to support substantial populations of GRSG, provide important connections between populations, and are important for maintaining GRSG populations. Management in SHMA is consistent with GHMA restrictions.

Among the alternatives that differentiate between PHMA and GHMA, Alternative 4 appears to allocate the most acres to PHMA; The DEIS explains that this allocation reflects the most up-to-date modeling and mapping.[22] The DEIS shows how each alternative allocates PHMA and GHMA. Table 2 shows these allocations. Confusingly, the total acreages in habitat management area allocations vary by alternative.

Table 2. Habitat management area allocations under the alternatives.

	Alternative 1	**Alt 2**	**Alt 3**	**Alt 4**	**Alt 5 (Preferred) & Alt 6**
Acres PHMA	32,465,000	32,535,000	69,199,000	36,701,000	34,803,000
Acres GHMA	26,383,000	25,878,000	N/A	25,946,000	23,718,000
TOTAL	58,848,000	58,413,000	69,199,000	62,647,000	58,521,000

[22] DEIS at 2-2.

Given the historical and anticipated declines of greater sage-grouse, BLM should allocate the most acres it can to PHMA. At a minimum, BLM should adopt Alternative 4's PHMA allocations. However, we make this suggestion in the context of our other comments in this letter that urge strong protections to GHMA and lek buffer zones. Absent these, we would urge expansion of PHMA protections to all occupied habitats.

As described at DEIS 2-11, GHMA generally are "lands that are or have the potential to become occupied seasonal or year-round habitat outside of PHMA or IHMA, managed to sustain GRSG populations." Despite this definition, GHMA are provided scant protection that are desperately inadequate for sustaining greater sage-grouse populations based on the scientific studies cited in the DEIS. For instance, oil and gas leasing with few restrictions on operations is permitted throughout GHMA (with a few state by state exceptions for areas proximal to leks, see discussion on lek buffer zones above) even though it is well accepted that fluid mineral energy development has a profound negative impact on greater sage-grouse persistence and the impacts are such that they are not adequately mitigated by timing restrictions and other minor surface use modifications.[23] In Colorado and Wyoming, controlled surface use (CSU) stipulations are in place within 2 miles of a lek and otherwise open without restriction; in Idaho, Montana, the Dakotas, Nevada, California, CSU stipulations are required; and the approach in Utah differs by field office. Allowing surface disturbance from energy development without disturbance caps, density restrictions, etc. in GHMA is not a management scheme that will "sustain GRSG populations."

Similarly, GHMA is open to all other types of uses and activities (although a few states provide minimal lek buffer zone protections within GHMA). As such, it exposes greater sage-grouse to disturbance that is known to reduce greater sage-grouse populations.

BLM must strengthen GHMA management to meet its stated intention of sustaining GHMA populations. BLM must more aggressively limit discretionary surface disturbances within the lek buffer zone and across the GHMA minimize unnecessary fragmentation and disturbance.

C. Minimize anthropogenic disturbance.

The scientific literature is replete with studies that demonstrate that anthropogenic infrastructure and disturbance reduces sage-grouse productivity and survival (e.g., Hovick et al. 2014; Naugle et al. 2011; Knick et al. 2013; Kirol et al. 2020, Manier et al. 2014; DEIS

[23] See DEIS discussion at 4-3 to 4-4 stating that sage-grouse declines in lek persistence and bird abundance resulting from energy development occur at all scales and are in part due to habitat fragmentation. ("Direct, indirect, and residual impacts from energy development accrue both locally and cumulatively at the landscape scale. GRSG populations typically decline following oil and gas development (Holloran 2005; Walker et al. 2007a; Doherty et al. 2008"). Indirect effects are habitat degradation or utilization displacement and are estimated to occur out to 11.8 miles from leks (Naugle et al. 2011).")

at 4-3) and the best way to sustain sage-grouse populations is to protect and connect the core areas by eliminating disturbance (e.g., Naugle et al. 2011).

1. Strengthen disturbance cap framework.

All the RMPA alternatives employ a disturbance cap to prevent excessive development in PHMA although they vary slightly in how they operate. Disturbance caps measure anthropogenic (infrastructure-related) disturbances and not sagebrush availability. Alternatives 1 and 2 measure disturbance at the biologically significant unit and project level, while alternatives 3-5 measure disturbance at the HAF fine-scale and project level. The denominator of the disturbance cap calculation includes all PHMA (including non-habitat and burnt areas, for instance). The disturbance caps are set at 3% at both scales except for in Wyoming, Montana and the Dakotas where it is set at 5% and a slightly different formula is used.

a. Disturbance cap limits are too high and should be reduced.

The alternatives offer disturbance cap limits of 3% in some of the states (excluding agriculture and wildfire) and 5% in other states (including wildfire and agriculture). Existing studies demonstrate that a lower disturbance cap is likely warranted. Kirol et al. (2020) studied the relationship between press disturbance (ongoing disturbance related to an existing development) and not pulse disturbance (the initial destructive event) related to renewable energy and fossil fuel development. They found a negative relationship between nest success and press disturbance with 91% of nests in areas with <3% press disturbance. The preponderance of nests—70%—were located in habitats with 0-1% press disturbance. They also found that any level of press disturbance depressed brood-rearing success. They did not detect an ecological threshold (e.g., a sudden decline in demographics when a certain amount of development occurs) in nest success but a general negative relationship to press disturbance. Kirol et al. (2020) also noted that the addition of pulse disturbance (for example, sagebrush treatments) may have an additive negative effect on brood survival in areas already affected by press disturbance. The authors note that this type of study is confounded by the fact that female sage-grouse locate nests in very low disturbance areas. The authors conclude that managers should avoid or minimize press disturbance in sage-grouse nesting and brood rearing habitat (i.e., multi-mile lek buffer zones). They also recommend reducing fragmentation (e.g., when development is unavoidable, clustering it further than a minimum of 1.6 km away from brood-rearing and nesting areas). Evaluating 5 km circles around leks, Knick et al. (2013) found that 99% of active leks across the western half of the sage grouse's range were surrounded by lands with 3% or less human development, and that about 78% of the leks were in the 0 to 0.5% developed category. The BLM and USFS recently implemented a 1.5%

disturbance cap for the Pine-Nut Mountains population of bi-state sage grouse based on the best available science.[24]

Empiric data also suggests that lower disturbance caps are warranted. The BLM five-year monitoring report (Herren et al. 2021) reported low surface disturbance values in biologically significant units. Few areas exceeded 1% and many were below 1% disturbance. The DEIS restates these numbers and also explains that BLM recalculated disturbance values using HAF fine-scale polygons and found similar values although the analysis was not disclosed). Even with these low disturbance values, greater sage-grouse is declining across 87% of the range since 2002.[25] Thus, empiric evidence argues for disturbance caps at or less than 1%. Even if anthropogenic disturbances are not the only cause for the declines, they are a contributing factor, and there is no reason to think that the other contributing factors (e.g., drought, invasives, recreation, fire) will not exist at similar or greater levels in the future, thus leading to continued declines.

Further, the 5% exception for Wyoming, Montana and the Dakotas, as far as we can tell, is unsubstantiated in the DEIS or the scientific literature (in fact the scientific literature argues for much smaller caps, and especially when oil and gas disturbances are involved[26] as is often the case in these states). The DEIS provides no explanation for why these states deserve a higher disturbance cap but does highlight that the higher disturbance cap, even though it includes agriculture and wildfire, will likely result in anthropogenic disturbances that exceed 3%.[27]

Based on the literature and empiric data, we recommend that BLM lower the disturbance caps across the range to 1% or less. BLM should make the disturbance caps consistent across the states as this will facilitate applying the adaptive management framework and our understanding of greater sage-grouse ecology. If BLM establishes caps that are greater than 1%, we recommend that BLM tier disturbance caps to sagebrush availability. This would help avoid the scenario where BLM approves new disturbances in neighborhood clusters or project areas where sagebrush availability due to wildfire or other causes is diminished. By way of example, BLM could allow 1% disturbance when sagebrush availability is 90% or greater, 0.5% disturbance where sagebrush availability is 80% or greater, etc. This approach is supported by Kirol et al. (2020) who found that press disturbance effects were heightened by pulse disturbance effects.

b. The range of alternatives is not reasonable in relation to disturbance caps.

[24] See Greater sage grouse Bi-state DPS Forest Plan Amendment, Record of Decision (2022) at 5. https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd649478.pdf.
[25] DEIS at I-3.
[26] e.g., See DEIS at 4-3.
[27] DEIS at 4-11.

BLM does not provide a reasonable range of alternatives for disturbance caps. All the alternatives offer a 3% and 5% mix of disturbance caps as described above. However, as we assert above, lower disturbance caps are warranted given greater sage-grouse continuing declines. Failure to provide a reasonable range of alternatives is a violation of NEPA and should be remedied.

c. While calculating disturbance caps at the HAF fine-scale and project scale make sense, BLM should also calculate the caps at the neighborhood cluster scale.

We agree that assessing the disturbance cap at a smaller scale than the biologically significant unit scale makes sense and support shifting the denominator to the HAF fine-scale unit. However, we also think that BLM should assess disturbance caps at the neighborhood cluster scale to align with the adaptive management hard and soft trigger assessments. That way, if a population trigger is tripped, BLM can assess the disturbance levels to inform the causal factor analysis and whether downward shifts in the disturbance caps or shifts in methodology might be in order.

d. Disturbance cap exceptions should only be considered and granted where conservation gains will be achieved.

The greater sage-grouse is declining and there is no evidence that the declining trend will shift under the preferred alternative (or possibly any of the alternatives offered in the DEIS). BLM should disallow exceptions to protective measures like disturbance caps unless clear conservation benefit to the greater sage-grouse would result.

2. Eliminate allowances for development in "non-habitat" within habitat management areas.

The DEIS 2-19 to 2-21 establishes the concept of "non-habitat" which are lands within habitat management boundaries that after field examination can be deemed non-habitat and exempted from habitat area management requirements. The "non-habitat" development allowances are a bad idea for sage-grouse for several reasons. First, it creates a loophole that can be easily abused. Second, it will increase fragmentation and edge effect within the habitat management area which overall leads to increased exotic invasions, human activity and disturbance, raven subsidies among other effects. Fragmented landscapes result in depressed lek persistence, lek attendance and greater sage-grouse survival[28] and reduce ecological integrity. Indeed, the USFWS in 2010 cited habitat fragmentation as a major threat to the greater sage-grouse and a primary reason for finding it warranted for listing under the Endangered Species Act.[29]

[28] DEIS at 4-2
[29] See 80 Fed. Reg. 59871.

The DEIS says that access to new developments in non-habitat will be restricted to existing routes[30] but as land managers know, that limitation is fairly meaningless as an existing route is one where someone has driven previously and not an officially designated route marked on a map. Further, the restriction does not limit upgrading the route which results in changes in public use of the route and on lands and waters near the access route.

Third, it misrepresents the level of protection afforded to habitat areas. The analysis of PHMA (and other habitat types like IHMA) throughout the DEIS is skewed by the fact that there are exceptions built into each of these habitat designations through the identification of "non-habitat."[31] This means that the protective designations included in the plan – and the acreages proposed under each alternative – are actually overstating the level of protection grouse habitat might actually achieve.

The DEIS fails to disclose and analyze the direct, indirect, and cumulative effects of 'non-habitat' development allowances on the integrity of sage-grouse habitat at multiple scales. The DEIS also does not disclose how the use of 'non-habitat' in Utah (established under early RMPAs) has affected sage-grouse habitat including patch size and fragmentation.

We recommend that BLM discard the concept of non-habitat to maintain the integrity of sage-grouse habitats and prevent increases in fragmentation and edge effect.

3. Close PHMA to energy development per National Technical Team (NTT) recommendations and best available science. At a minimum, BLM should remove waivers, modifications, and exemptions that allow unnecessary disturbance in PHMA and lek buffer areas (where they exist).

Oil and gas development has long been recognized as one of the leading threats to sage grouse, due to its pervasiveness in the sagebrush biome as well as the severity of its impacts. The NTT report recommended generally closing priority sage grouse habitats to energy development: "the conservation strategy most likely to meet the objective of maintaining or increasing sage-grouse distribution and abundance is to exclude energy development and other large-scale disturbances from priority habitats" (NTT 2011 at 20).

While numerous studies have demonstrated that oil and gas development has significant adverse effects to greater sage-grouse (Manier et al. 2014; NTT 2011; Connelly et al. 2004; Lyon and Anderson 2003; Walker et al. 2007; Holloran et al. 2010; Knick et al. 2011; Green et al. 2017; Aldridge and Boyce 2007; Kirol et al. 2015; Rice et al. 2016; Coates et al. 2023; Hanser et al. 2018; Kirol et al. 2020; Fedy et al. 2014; Harju et al. 2010), all the DEIS alternatives except alternative 3 leave PHMA open to oil and gas leasing. BLM establishes a no surface occupancy (NSO) requirement on new leases in PHMA (except in Wyoming) but

[30] See, e.g., 2-CO-41.
[31] DEIS at 2-19

allows waivers, exceptions and modifications to that requirement. BLM provides very little protection to sage-grouse habitat from oil and gas in GHMA, applying timing restrictions[32] and other unimpressive surface use controls.

Impacts from oil and gas development do not vary state to state, yet BLM applies a confusing (and unexplained) patchwork of management requirements for this activity across PHMA and GHMA for all alternatives. See Attachment 1 that summarizes management of PHMA and GHMA for various activities including oil and gas and illustrates the confusing and nonsensical patchwork of requirements and exceptions. For instance, the preferred alternative exempts Wyoming, where oil and gas impacts and threats are the greatest, from the PHMA NSO requirement except for within 0.6 mile of a lek and even that restriction can be overridden with allowed exceptions. Note that the NTT report (2011) specifically found the 0.6 mile buffer to be inadequate and BLM acknowledges the deficiency of a 0.6-mile lek buffer:

> "In WY, applying an NSO within 0.6 miles of occupied GRSG leks in PHMA would protect fewer areas than in other states. Buffer distances from 0.5 to two miles from oil and gas infrastructure have been shown to be inadequate to prevent declines of birds from leks (Walker et al. 2007a). Studies have shown that greater distances, anywhere from two to four miles, are required for viable GRSG populations to persist (Connelly et al. 2000b, Holloran and Anderson 2005, Walker et al. 2007a)."[33]

(Also see Hess and Beck 2012; Kirol 2020; Apa et al. 2008). The preferred alternative is similar to alternative 1 (the 2015 RMPAs) in regard to fluid mineral management in PHMA in that BLM commits to trying to avoid authorizing oil and gas activities in PHMA, establishes a NSO requirement in PHMA (with state-based exceptions) with allowances for waivers, modifications, and exceptions (WEM). Public Employees for Environmental Responsibility and Western Watersheds Project analyzed BLM records and found that approximately 90% of the 127 industry applications for exemptions from protective stipulations in Wyoming were granted.[34] Their analysis showed that BLM is apt to allow surface disturbance when

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[32] While timing restrictions may avert habitat fragmentation and loss for that one season, if development is allowed to go forward, the full impacts will be realized the following season. In other words, timing limitations for oil and gas (or other proposed development) are meaningless if development will be allowed following the temporary seasonal limitation only to fragment and destroy the habitat the following year.

[33] DEIS 4-13.

[34] *See* press release issued by Public Employees for Environmental Responsibility and Western Watersheds Project on Wednesday, March 8, 2024 entitled *BLM Oil Exemptions Threaten Sage Grouse in Wyoming,* available at https://peer.org/blm-oil-exemptions-threaten-sage-grouse-wyoming/ (accessed May 3, 2024) ("Documents released by Public Employees for Environmental Responsibility (PEER) and Western Watersheds Project show that the field offices of the Wyoming BLM granted approximately 90% of the 127 industry applications for exemptions from protective stipulations. These protective stipulations are designed

pressured by industry even in the face of overwhelming science showing deleterious effects to sage-grouse.

In 2019, a report by Gardner et al. (2019) analyzed oil and gas development on federal lands and sage grouse habitats from the implementation of the 2015 plans through March 2019. This research demonstrated that drilling in designated sage grouse habitat increased by 2.98 times between February 2017 and March 2019 compared with the October 2015 to January 2017 time frame. This was a rate higher than drilling on all public lands across all states during the same periods showing that oil and gas development shifted towards PHMA over this time period. From 2016 through the first quarter 2024, BLM approved and sold oil and gas leases on 6.8 million acres of PHMA, with 4.7 million of those acres in Wyoming. In GHMA, 8.7 million acres of leases were approved and sold, with 6.3 million acres of leases in Wyoming.[35] It is clear that 'avoidance' for fluid minerals is not working to limit disturbances and that BLM needs to close PHMAs and lek buffer zones to fluid mineral leasing. BLM maintains NSO in lieu of closures, and BLM should remove waivers, modifications, and exemptions that allow unnecessary disturbance in PHMA and lek buffer areas (where they exist).

The NTT report recommended that BLM reduce the impacts from pre-existing oil and gas leases and wells[36] yet BLM's alternatives do not contemplate doing this. BLM's final RMPAs should pursue initiatives for early relinquishment of existing fluid mineral leases and especially prioritizing leases overlapping lek buffer zones and PHMA, and ensure that all existing grandfathered leases comply fully with existing stipulations and are subject to the most protective conditions of approval permitted by law. BLM should also carefully scrutinize any requests for suspension of grandfathered leases to avoid improper and unlawful extensions of primary lease terms.

Like oil and gas, geothermal exploration and development also negatively affect greater sage-grouse. Coates et al. (2023) found that sage grouse abundance declined approximately 24% within 5 km of geothermal sites in central Nevada, while lek absence rates (e.g., local extirpation) increased by about 73% within 2 km of geothermal development. Priority sage grouse habitat should be closed to geothermal leasing, as well as lek buffer zones for leks and winter habitat.

Renewable energy also negatively affects greater sage-grouse as described at DEIS at4-6. The USFWS found that "Exclusion is an effective tool to reduce disturbance and minimize impacts in the most important habitats for conservation on federally managed lands

to protect sage grouse by safeguarding the weeks when the birds breed and nest from outside disturbances.")

[35] Data from https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing.

[36] NTT (2011) at 23.

because the activity will not be allowed in important habitats."[37] Further, USFWS found that BLM's wind PEIS did not address greater sage-grouse conservation measures and thus contributed to the finding that regulatory mechanisms were inadequate. BLM is currently revising its solar PEIS[38]; the draft deferred to this planning process for sage-grouse related direction. In this draft, BLM's preferred alternative designates PHMA an avoidance for renewable energy in contrast to the 215 plans that designated PHMA as excluded to renewable energy. Renewable energy development is important but just like other forms of industrial development its infrastructure and associated fragmentation negatively impacts greater sage-grouse survival. We recommend that lek buffer zones and PHMA be designated as exclusion zones.

We recommend the following: Given the well documented impacts caused by energy operations on greater sage-grouse, BLM should close PHMA and lek buffer zones to oil and gas, geothermal and renewable energy leasing. Only allow WEM if it benefits sage-grouse. Finally, BLM should eliminate the state-to-state differences in energy leasing unless it can provide a compelling scientific rationale for them.

The DEIS fails to take a hard look at oil and gas. The DEIS does not disclose the current disturbance (direct and indirect) of oil and gas wells in habitat (PHMA, GHMA, IHMA, winter habitat, etc.), and how many leases were sold in PHMA since 2015. The DEIS also does not adequately describe how continued fossil fuel development within the planning area will contribute to climate change and affect sage-grouse habitat and demographics. Finally, the DEIS does not disclose how often it has utilized WEMs and the associated effect on sage-grouse and its habitat.

4. Strengthen livestock grazing provisions.

Grazing occurs on virtually all BLM-administered lands in the sagebrush biome and has pervasive impacts to its ecology. Those effects are well documented in the scientific literature and include disturbance of soils, soil hydrology, and soil biocrusts; changes to botanical composition, structure, and function including enhanced invasion by cheatgrass; and changes to natural fire regimes (Niederman et al. 2023; Molvar 2024). The USFWS in its 2010 warranted but precluded determination discussed at length the impacts of grazing on sage-grouse.[39] It explained that while livestock grazing is the most widespread type of land use across the sagebrush biome, sagebrush plant communities are not naturally adapted to domestic grazing disturbance and that grazing changes the functioning of ecosystems

[37] USFWS 12 month finding (2015), supra, at 59,877.
[38] NEPA Number: DOI-BLM-HQ-3000-2023-0001-RMP-EIS.
[39] USFWS 12 month finding (2010), supra, at 13,939.

into less resilient, and in some cases, altered communities. The USFWS summarized its grazing discussion as follows:[40]

> Livestock management and domestic grazing can seriously degrade sage-grouse habitat. Grazing can adversely impact nesting and brood-rearing habitat by decreasing vegetation concealment from predators. Grazing also has been shown to compact soils, decrease herbaceous abundance, increase erosion, and increase the probability of invasion of exotic plant species. Once plant communities have an invasive annual grass understory dominance, successful restoration or rehabilitation techniques are largely unproven and experimental (Pyke, in press, p. 25). Massive systems of fencing constructed to manage domestic livestock cause direct mortality to sage-grouse in addition to degrading and fragmenting habitats. Livestock management also can involve water developments that can degrade important brood-rearing habitat and or facilitate the spread of [West Nile Virus]. Additionally, some research suggests there may be direct competition between sage-grouse and livestock for plant resources."
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> ....
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> In many areas, existing mechanisms (or their implementation) on BLM lands and BLM-permitted actions do not adequately address the conservation needs of greater sage-grouse, and are exacerbating the effects of threats to the species described under Factor A.

The 2015 not warranted finding hinged on an effective grazing management framework involving managing for specific sage-grouse habitat objectives, adaptive management and prioritization of renewals in the most important places for sage-grouse including SFAs.[41]

Alternative 3 eliminates livestock grazing and alternatives 2, 4, 5 and 6 offer management tools that are restatements of range program practice and obligations (e.g., permit terms and conditions, allotment management plans, annual pre-turnout authorization meetings, and ongoing monitoring). Notably alternatives 4-6 appear to jettison habitat objectives entirely as it pertains to livestock grazing and instead relies on Land Health Standards to evaluate the impacts of grazing on sage grouse habitat. Compare, for example, *e.g.* Alternative 1 with Alternatives 4-6 on pages 2-104, *et seq*.[42] Whereas the 2015 plans

[40] USFWS 12 month finding (2010), supra, at 13940 and 13979.
[41] USFWS 12 month finding (2015), supra, at 59,878
[42] For instance, compare Alternative 5's Objective RM-1 in Alternative 5 to that in Alternative 1.

Alternative 5: "Specific to GRSG habitat, manage livestock grazing in a manner that 1) meets or makes progress toward meeting the Land Health Standard or special status species, and applies the guideline that

required that permit terms and conditions include or be adjusted to include both land health standards and habitat objectives (2-105), the preferred alternative simply states that the BLM should *consider adjustments to meet or make progress towards meeting Land Health Standards*. (Emphasis added.) The Land Health Standards for GRSG "would *generally* be met when vegetation conditions provide for suitable or marginal habitat for GRSG habitat at the HAF site scale based on existing ecological condition, ecological potential, and existing vegetation information."[43] (emphasis added.)

BLM's approach in alternatives 4, 5, and 6 is predicated on completing land health standard assessments, evaluations and determinations in a timely manner. However, BLM has a dismal record of completing land health determinations in a timely manner, and for that matter, at all. Table 3-6 (DEIS at 9-4) reports on the Land Health Standards of allotments with at least 15 percent PHMA and reports that 53% of the allotments are meeting or making significant progress towards meeting the Land Health Standards, 20% have never been evaluated and 7% do not have information in the data base. Making significant progress towards meeting is not, in fact, any guarantee that the sage grouse habitat is in good condition, just that some aspect of the habitat, based on monitoring, is "trending upward." Further, for the data to be meaningful, BLM must only look at recent land health determinations as many allotments have only been evaluated once since the mid 1990's and are outdated.

BLM's approach also is predicated on completing permit renewals with a NEPA analysis. However, a recent report by Western Watersheds Project shows that for most permit renewals, BLM is not undertaking a NEPA analysis and instead is renewing permits under FLPMA 402(c)(2) without changes to terms and conditions.[44] See Figure 1. Their data

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addresses "restoring, maintaining, or enhancing habitats of…special status species to promote their conservation" (43 CFR Part 4180.2(e)(9) or subsequent changes to regulations or policy).

Alternative 1: 'Objective RM-1: GRSG objectives and well-managed livestock operations are compatible because forage availability for livestock and hiding cover for GRSG are both dependent on healthy plant communities. Agreements with partners that promote sustainable GRSG populations concurrent with sustainable ranch operations offer long-term stability.

In the context of sustainable range operations, manage the range program to:

1) maintain or enhance vigorous and productive plant communities; 2) maintain residual herbaceous cover to reduce predation during GRSG nesting and early brood-rearing; 3) avoid direct adverse impacts to GRSG-associated range project infrastructure; and 4) employ grazing management strategies that avoid concentrating animals on key GRSG habitats during key seasons.

[43] DEIS at 2-106.

[44] See: Western Watersheds Project Storymap entitled "Renew or Review" at https://storymaps.arcgis.com/stories/45ea3ebe6ef54bd0840bb41e63a79174. (Accessed May 3, 2024); and March 23, 2002 article in E&E entitled *Many BLM grazing permits renewed without NEPA review, group says* ("Among other things, Osher said the data shows that many of the grazing permits that have not undergone

suggests that use of the FLPMA 402 (c)(2) 'workaround' is more prevalent in PHMA and SFAs than in GHMA or other grazed areas (even though BLM was supposed to be prioritizing renewals in important habitats and SFAs under the prior RMPAs.) This poor record of undertaking environmental analyses under NEPA for permit renewals makes BLM's apparent elimination of a priority system and timeline for grazing permit renewals in the preferred alternative even more egregious.[45]

Specific to undertaking NEPA analyses for grazing authorizations, BLM's preferred alternative weakens the accountability of the agency in providing a NEPA analysis that includes an alternative with a threshold and response for grazing when habitat conditions are not being met or in high priority allotments.[46] Alternative 4 uses the imperative "shall include" but the preferred alternative weakens this requirement to "should consider including." By failing to require this in the range of alternatives, the BLM is tying its own hands for a rapid response to deteriorating conditions or changed circumstances in the future.

BLM fails to take a hard look at the effects of the proposed livestock grazing plan components under the alternatives. For example, the analysis of the effects of Alternative 1 and Alternative 2 to livestock grazing operations (see DEIS 4-68 et seq.) fails to discuss that the prioritization scheme discussed in the 2015 RMPAs and adopted in 2016 was superseded by IM 2018-24. BLM needs to disclose the consequences of continuing to authorize grazing under the FLPMA workaround provision, including that doing so will not incorporate adjustments based on chronic drought that is plaguing three-quarters of the PHMAs and much of the sagebrush biome. More generally, BLM fails to disclose and analyze the direct, indirect, and cumulative impacts of grazing in landscapes affected by chronic drought and climate change. It is reasonably foreseeable that prolonged severe drought in a large portion of the planning area will lead to less resilient landscapes afflicted with greater level of invasive plant species, loss of biodiversity, and increased desertification (Niederman et al. 2023).

BLM fails to disclose the condition of grazed lands within five miles of leks and the status of grazing permits, allotment plans, and other regulatory tools within these crucial biological zones. Without this information, BLM cannot evaluate if the plan components under each of the alternatives are sufficient to meet BLM's FLPMA obligations to conserve sensitive species.

NEPA analysis are in areas containing designated priority habitat for the greater sage grouse, or in areas designated as sagebrush focal areas — habitat that BLM and the Fish and Wildlife Service have deemed critical to the bird's survival."). Available at https://www.eenews.net/articles/many-blm-grazing-permits-renewed-without-nepa-review-group-says/ (accessed May 3, 2024).

[45] DEIS at 2-107.

[46] DEIS at 2-107

Finally, BLM chose not to analyze an alternative offered by the public to establish livestock grazing exclosures to use as ungrazed reference areas stating that this issue was out of the scope of this planning proposal and that exclosures are generally not a planning level decision. We disagree with this conclusion for multiple reasons. First, exclosures are a powerful tool for understanding the impacts of livestock grazing at multiple scales, including rangewide. Requiring at least one adequately-sized grazing exclosure within each allotment for the purposes of bolstering the effectiveness of the grazing management framework is a plan level decision. Secondly, the USFWS in its 2010 warranted but precluded determination specifically discussed the value of exclosure studies and concluded that, in the context of grazing, BLM was not using tools at the land use planning level to address the needs of sage-grouse.[47] Thirdly, numerous scientific articles have demonstrated the value of exclosures in elucidating grazing-induced changes to vegetation, soil characteristics, and habitat conditions (Sarr 2002; Laine et al. 2015; Krall and Roni 2023).

In the final RMPAs, BLM must adopt a stronger grazing management framework than that offered in alternative 5 to reduce the considerable adverse impacts of livestock grazing on sagebrush steppe ecosystems and greater sage-grouse. Specifically, BLM should:

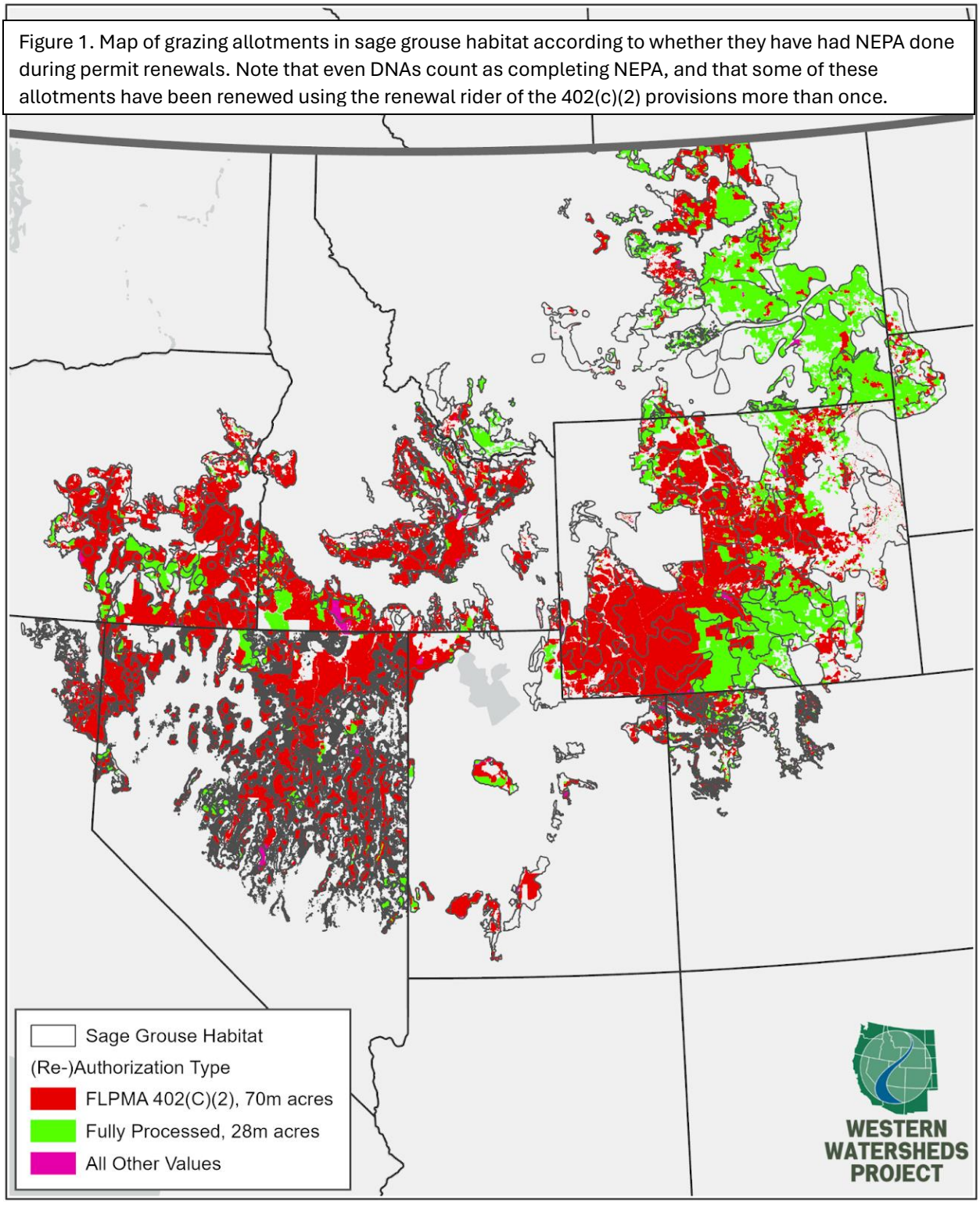
- Require grazing to be accountable for meeting habitat objectives and land health standards;
- Establish a priority scheme and timelines for renewing grazing permits with NEPA analysis. Priorities should consider the importance of the habitat to sage-grouse viability, TAWS warnings and watches, ACEC designations, rate of climate change, etc.
- Require that NEPA analyses for livestock grazing authorizations include an alternative that includes specific thresholds and defined responses in the terms and conditions of the grazing authorization where the special status species standard is not being met and grazing is a causal factor;
- Track and make public when allotments/watersheds are failing to achieve land health standards due to livestock grazing and the corrective action BLM is taking to address the failure; and
- Require at least one adequately-sized grazing exclosure within every grazing allotment to improve rangewide understanding of livestock grazing on greater sage-grouse habitats and populations, and identify opportunities for strengthening the grazing management framework rangewide.

Further, BLM must take a hard look at the impacts of proposed livestock grazing under the alternatives and correct the deficiencies identified above, including, importantly,

[47]USFWS 12 month finding (2010), supra, at 13,979.

disclosing grazing impacts (direct, indirect, and cumulative) to sage-grouse habitat with lek buffer zones.

Figure 1. Map of grazing allotments in sage grouse habitat according to whether they have had NEPA done during permit renewals. Note that even DNAs count as completing NEPA, and that some of these allotments have been renewed using the renewal rider of the 402(c)(2) provisions more than once.



V. Strengthen mitigation provisions.

Mitigation must be managed under a net conservation gain standard to provide an incentive to avoid and minimize impacts. All alternatives except Alternative 1 establish a no net loss of habitat standard for mitigation while Alternative 1 establishes a net gain of habitat standard. The difference between the two is important as the no net loss standard does not incentivize BLM or industries to avoid impacting habitat. It is well understood that protecting intact habitat should be the top priority and allowing habitat destruction, even when mitigated through habitat enhancement projects elsewhere, is a poor substitute. For these reasons, BLM should require an overall gain to habitat when industries develop within greater sage-grouse habitat.

Further, compensatory mitigation through the acquisition of habitat at a 1:1 ratio is not a gain since the acquired habitat remains status quo while the BLM habitat is authorized to be destroyed. Guarding against future development is a good idea but cannot be viewed as no net loss.

We appreciate that the preferred alternative requires the completion of compensatory mitigation before the damaging use is authorized to start.[48] However, this is not sufficient to assure that the compensatory mitigation actually restored or improved habitat. We know that many vegetation treatments, for instance, do not improve ecological conditions and sometimes worsen them (Jones 2019). To ensure that mitigation actually is meaningful, BLM must require that the specified habitat benefits are achieved before the damaging use is authorized to start.

Finally, the preferred alternative states that "Mitigation amounts should comply with State agency or regulatory requirements and be consistent with BLM mitigation policy."[49] In states without a mitigation requirement, mitigation should minimally meet no net habitat loss." However, the DEIS does not provide a description of state mitigation programs or explanations of how mitigations would be determined. Absent this essential information, BLM and the public cannot evaluate, compare, and comment on the alternatives. Moreover, without this information in hand, BLM's analysis and conclusions about the direct, indirect, and cumulative impacts of the proposed alternatives are uninformed. It is not sufficient for BLM to sprinkle the DEIS documents with the word "mitigation" yet fail to define what those specific measures will be and analyze them cohesively in the context of direct, indirect, and cumulative impacts on the species.

Additionally, a successful mitigation framework needs a common biological currency (Naugle et al. 2011). Negotiating offsets on a case-by-case basis without the science to

[48] DEIS at 2-23.
[49] DEIS 2-23.

back up decisions and track effects will inevitably result in the continued decline of habitat integrity and sage-grouse populations.

VI. Strengthen the adaptive management framework.

The greater sage-grouse conservation strategy and the RMPAs' effectiveness in providing adequate regulatory controls hinge on an effective adaptive management and monitoring strategy. All the DEIS alternatives include an adaptive management strategy based on that included in the 2015 RMPAs. The adaptive management approach in alternatives 3-6 includes population and habitat thresholds and triggers and utilizes the USGS Hierarchical Population Monitoring Framework (currently the Targeted Annual Warning System procedures [TAWS]; Coates et al. 2021). The TAWS provides a range-wide approach to monitoring populations at multiple scales and teases out climate change and natural cycling effects from population changes resulting from changes in habitat conditions.

A soft population threshold is met when there is a TAWS watch (a 2 consecutive year, negative rate of population change at the neighborhood cluster that shows a population decline that is either different or more rapid than that of the associated climate cluster; Coates et al. 2021). A hard population trend threshold is met when there is a TAWS warning (a 2 out of 3 (fast) or 3 out of 4 (slow) consecutive year negative rate of population change at the neighborhood cluster that is either different or more rapid than those of the associated climate cluster; Coates et al. 2021). A hard or soft population trend threshold can be reversed when: 1) Population trends at the neighborhood cluster trend realigns with the climate cluster trend as indicated by the TAWS model (i.e., no longer a TAWS "watch" or "warning"); 2) there are sufficient numbers of GRSG (abundance) to allow for recovery of population numbers to those present at or before the threshold was met, based on local growth rates determined by the state wildlife management agency, and BLM has the concurrence of the state wildlife management agency; or 3) the state wildlife management agency can demonstrate the TAWS model incorrectly identified a watch or warning.

The habitat thresholds are based on losses in acreages capable of supporting sagebrush in a given year in a neighborhood cluster. A soft threshold is met when 5% or more of the area capable of supporting sagebrush is lost in a given year. A hard habitat threshold will be met when existing sagebrush extent drops below 65% of the area capable of supporting sagebrush or if a soft habitat threshold is met in four consecutive years. A hard or soft habitat threshold can be reversed if restoration of sagebrush vegetation communities within the neighborhood cluster returns to the sagebrush conditions and/or habitat function prior to the events that resulted in meeting a habitat threshold. If the neighborhood cluster cannot be restored to original sagebrush conditions and/or habitat function due to ecological or disturbance limitations (e.g., intense fire killed soil microfauna, dense anthropogenic activities) restoration and/or habitat enhancement in

adjacent neighborhood clusters can be considered to increase the number of GRSG supported in those areas.

When triggers are met, BLM must conduct a causal analysis within specified timeframes. If the causal analysis identifies the cause for habitat or population declines, BLM will modify any permitted activity identified as a causal factor to meet a threshold, as legally allowable, on BLM lands in coordination with the permit holder and conduct monitoring of the affected habitat or population (or both if appropriate) to assess the efficacy of the modification. For new authorizations, project level NEPA analyses will specifically evaluate if the proposed new activity could result in contributing to sustaining the threshold or result in the threshold being met again. If no cause for a habitat or population decline can be determined, the BLM may consider implementing additional restrictions on existing or new authorizations in the area, consistent with permits/surface use rights in coordination with the permit holder and the state wildlife management agency. This is to reduce disturbance until either a causal factor can be determined through additional monitoring and analyses, or the population declines cease.

A. We support using the TAWS to evaluate population trends and as a basis for thresholds and triggers.

The TAWS provides a range-wide approach to monitoring populations at multiple scales and teases out climate change and natural cycling effects from population changes resulting from changes in habitat conditions. It is the only population monitoring approach that provides consistent data across the range; to date, states apply their own monitoring and reporting methods that leads to inconsistencies across the range and barriers to rangewide population analysis. Further, the state methodologies do not parse out climate change and population cycling effects from habitat induced effects which is needed for adaptive management responses.

B. The adaptive management framework allows continued declines.

The adaptive management framework is ostensibly designed to catch habitat and population declines and stem them in a timely manner. However, the way the framework is structured, declines can continue to occur every year even when triggers are met and adaptive management actions are forced. Over time, these cumulative declines in both habitat and population will contribute to extirpations and overall rangewide decline.

1. Habitat triggers allow continued declines.

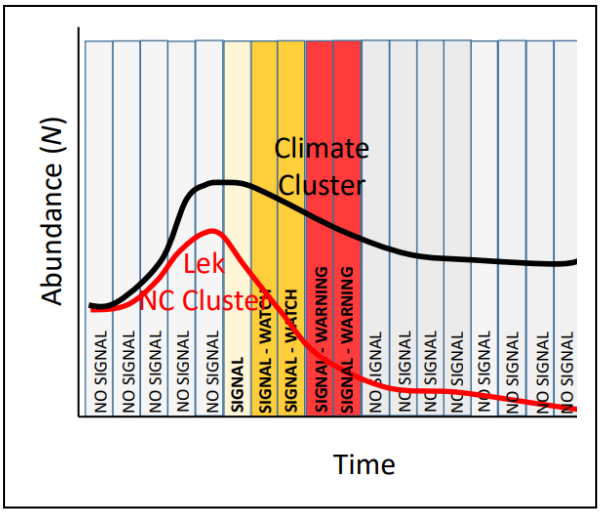
The habitat triggers are designed such that PHMA can be lost up to 5% yearly without triggering adaptive action. This allows for continued and significant habitat declines that would never trip a trigger. Further, even if the habitat thresholds are tripped, they can be reversed even when the habitat losses that caused the triggers are not restored to functional sage-grouse habitat. Specifically, a habitat threshold can be reversed by

restoring or enhancing habitat in adjacent neighborhood clusters without having to demonstrate that the enhancements actually increased greater sage-grouse populations over a period of time or that the increases (if they happen) recover the populations within both clusters to what they were prior to the habitat losses. Even if the abundance was recovered, less habitat overall makes the species more vulnerable to future perturbations.

Further, high site fidelity coupled with low adult survival rates and avoidance behavior result in a lag of three to four years between the onset of development activities and lek loss (Naugle et al. 2011; Hovick et al. 2014). Thus, the adaptive management framework will have a built-in lag during which additional development will be allowed before population declines manifest.

We offer the following recommendations to strengthen the habitat thresholds. First, we recommend that BLM specify that an additional way to hit a hard habitat threshold is to lose 10% or more habitat within a three year period. Second, we recommend that BLM not allow the habitat trigger to be reversed following enhancement projects in adjacent clusters for the reasons discussed above, but if BLM keeps the reversal language it must be modified so that adequate population increases must be demonstrated before reversal is granted. Third, we recommend that BLM disallow disturbing activities within a triggered area until habitat function is restored and population numbers are recovered to pre-trigger level.

2. Population triggers allow continued declines.



Similarly, the population triggers also allow for continued declines. Population triggers can be reversed if the neighborhood cluster trend syncs back up to the climate cluster trend, even if the overall abundance is lower. When a warning occurs, BLM must take management action to realign climate cluster and neighborhood cluster trend lines but the overall effect is most likely a decline in abundance. The graph to the right is excerpted from a USGS powerpoint presentation on the TAWS that illustrates this scenario. If this scenario is repeated multiple times in space and time, the overall effect would be continued declines in greater sage-grouse populations, not sustainability or recovery.

3. Adaptive management framework does not address declines resulting from stochastic events.

Finally, the TAWS is designed to issue watches and warnings when neighborhood clusters decline faster than climate clusters, but not to issue warnings when climate clusters

declines. Thus, the adaptive management model does not attempt to sound alarms where population declines are happening due to climate change or incentivize addressing these declines. To the contrary, the model is designed to accept changes in climate clusters even though even though climate cluster declines will push the sage-grouse further towards extinction.

Coates et al. (2021) showed that population rates are <1 in all of the climate clusters for medium to long time periods (4-6 population oscillations), as shown in the figure below (after Coates et al. 2021). Warnings and watches will not trigger (and thus adaptive management actions will not occur) so long as the declining trend of the neighborhood cluster aligns with the declining trend of the climate cluster. Without addressing the long-term climate change-induced population declines, the RMPAs do not provide the regulatory certainty that is required to meet the BLM's obligation to conserve sensitive species and preclude the likelihood of listing.

We recommend that BLM modify the adaptive management section to include overall population loss thresholds and triggers; this could be done at the climate cluster scale such that BLM is forced to restrict discretionary disturbances and increase the pace and effectiveness of restoration in climate clusters experiencing population declines below a specified threshold.

4. Required adaptive management actions are insufficient to address declines.

When thresholds are met, BLM is required to evaluate the cause. If causes are discernable, BLM will modify existing authorizations or permits (related to the identified cause) to address the causes and, for new authorizations, will specifically evaluate in project level NEPA if the proposed new activity could result in contributing to sustaining the threshold or result in the threshold being met again. If causes are not discernable BLM may consider implementing additional restrictions on existing or new authorizations in the area, consistent with permits/surface use rights in coordination with the permit holder and the state wildlife management agency.

Where causes are identified, BLM is not barred from issuing new authorizations even if they will harm sage-grouse. Where causes are not discernable, BLM is similarly not barred from

Estimates of annual rate of change in greater sage-grouse abundance within climate clusters across six timeframes. Excerpted from Coates et al. 2021.

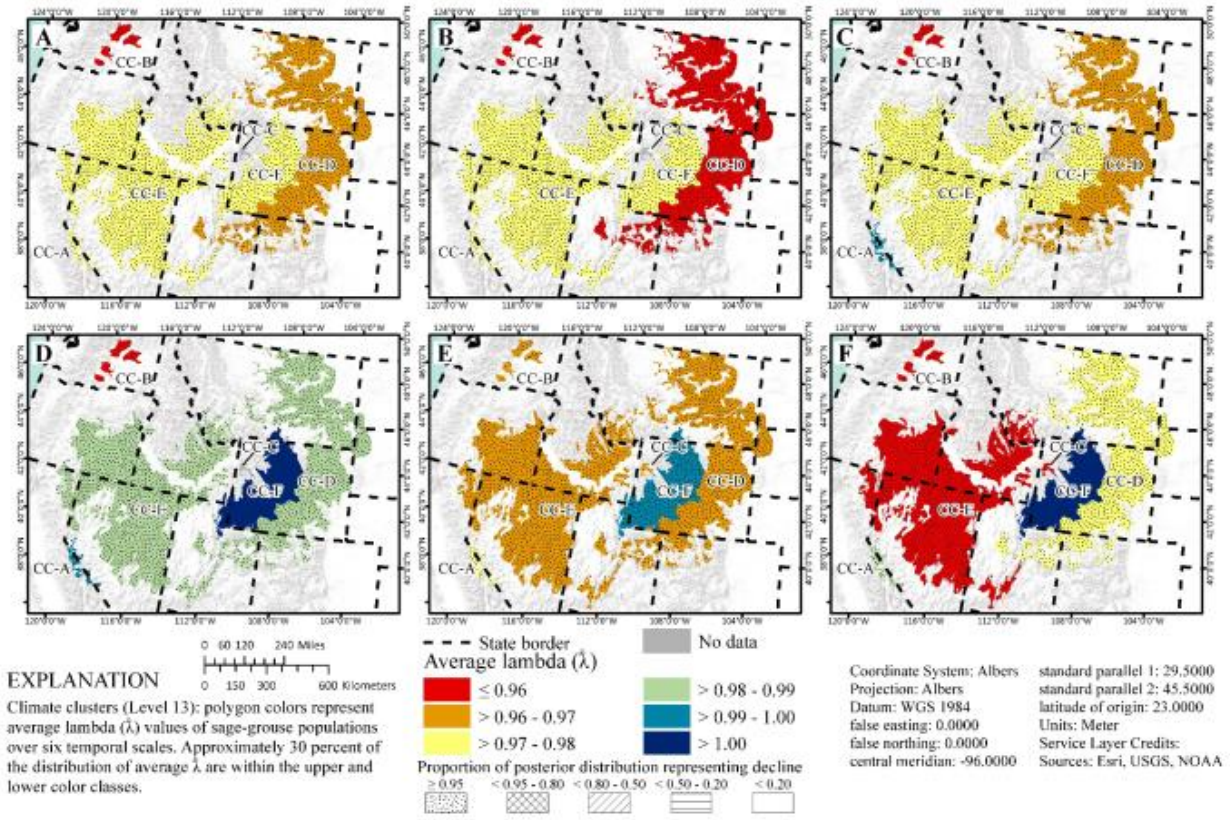


Figure 19. Range-wide spatial estimates of average annual rate of change ($\hat{\lambda}$) in abundance of greater sage-grouse (*Centrocercus urophasianus*) across six temporal scales based on periods of oscillation: *A*, Long (six periods); *B*, Medium/Long (five periods); *C*, Medium (four periods); *D*, Short/Medium (three periods); *E*, Short (two periods); and *F*, Recent (one period) within climate clusters (A–F). Map images are the intellectual property of Esri and are used herein under license. Copyright © 2020 Esri and its licensors. All rights reserved.

issuing new authorizations and not required to take action that will reduce stressors. The only scenario where BLM must take action is when the cause is identifiable and related authorizations exist.

We recommend that BLM restrict new authorizations in neighborhood clusters where triggers are tripped regardless of cause until the triggers are reversed. Further, we recommend that BLM undertake activities to reduce stressors such as removing unnecessary roads and fences, eradicating invasives, reducing soil disturbance, and restoring riparian zones.

5. The DEIS does not take a hard look at the adaptive management framework.

The DEIS does not disclose or analyze the effectiveness of the current adaptive management framework. The DEIS does not provide information on what adaptive

management actions were taken and their effect on habitat condition and population trends and abundance. Further, the DEIS does not discuss or analyze how the one-way ratchet effect inherent in the adaptive management framework will affect long-term persistence. BLM must remedy this in the final EIS.

VII. Mining is not adequately analyzed in the DEIS and addressed in the alternatives.

A. The reasonably foreseeable development scenario does not address hard rock mining.

The DEIS (Vol. 3, 12-1) states that the purpose of the Reasonably Foreseeable Development (RFD) scenario in Appendix 12 is "to provide a reasonable projection of future activity associated with mineral exploration and development in the planning area under each of the proposed alternatives." However, the DEIS fails to include locatable minerals in the 20-year RFD.

In the economic analysis appendix, the DEIS (Vol. 3, p. 13-3-14) states that regions in Idaho, Oregon, and Nevada have had sharp increases in the average number of annual mining claims since 2016. Projections by federal agencies (DOE and USGS) predict that the heightened demand for certain minerals is likely to continue for many years. A 20-year RFD for locatable minerals is necessary to determine the potential direct, indirect and cumulative effects of locatable mineral exploration and development on GSG and GSG habitat over the planning term, to analyze the various management alternatives, and to help determine whether the BLM's goals and objectives can be met.

The range of alternatives includes alternatives that recommend mineral withdrawals in a portion of the planning area. Although the DEIS states that recommending a mineral withdrawal does not itself restrict any surface use, the EIS must include an RFD for locatable minerals to provide the information necessary to compare alternatives with and without withdrawal recommendations. Further, an active mineral withdrawal process is underway by BLM, offering a parallel process to implement proposed and necessary withdrawals, if authorized.

The RFD should include descriptions and map locations for high, medium and low mineral potential in the planning area to inform the potential range of direct, indirect and cumulative effects of mineral development to PHMAs in the next 20-years, whether there are regions/populations/leks that are particularly at risk, the potential cumulative effects of locatable mineral development in combination with other mineral development (fluid, solid, etc.), and their location with respect to proposed ACECs, and other considerations essential to this analysis. The RFD should also include the number, location and size of

existing locatable mining claims, notices and plans of operations (POOs) within the planning area, along with estimates of projected new claims, notice-level and POOs for exploration and operations, and expansions.

This is comparable to the BLM's recent DEIS for the Central Yukon Resource Management Plan (CYRMP) in Alaska covering 13.1 million acres of BLM-managed lands, where the BLM considered alternatives to retain or lift mineral withdrawals in the planning area. The CYRMP included an RFD for locatable minerals, including mineral potential, current and estimated number of new locatable mining claims, current and estimated number of proposed, existing and projected exploration and mining plans.

B. The BLM cannot comply with its special status species policy, meet its purpose and need, or achieve goals and objectives (e.g., no net loss, etc.) without recommending mineral withdrawals.

The General Mining Law of 1872 is the fundamental statute governing hardrock mineral development on federal public lands. Under the 1872 Mining Law, individuals can stake an unlimited number of mining claims on federal lands and hold those claims for an indefinite period of time unless such land has been withdrawn from mineral entry. A valid claim affords the claimant a right to mine, subject to all applicable laws.

Under the General Mining Law of 1872, BLM prioritizes mining over other public land uses.[50] As described in the purpose and need section of the 2015 proposed Sagebrush Focal Area (SFA) Mineral Withdrawal[51]:

> "The BLM and the Forest Service may not, through their surface management regulations at 43 CFR part 3715, 43 CFR part 3809, or 36 CFR part 228, prohibit use under the mining laws that is otherwise compliant with the regulations, which could result in loss of greater sage grouse habitat important for the persistence of the species.... only a withdrawal from location and entry under the Mining Law can prevent the establishment of new mining claims and provide certainty that lands not encumbered by mining claims will not be developed
>
> ....because certain mining operations are viewed by USFWS as a threat to the persistence of greater sage grouse and the agencies have less discretion with respect to when and where mineral exploration and mining under the Mining Law is conducted, as compared to other agency authorizations (e.g., oil and gas leasing),

[50] The Nevada 2014 Sage Grouse Conservation Plan states that "Locatable mineral development and exploration is governed under the General Mining Law of 1872 and is a *nondiscretionary* activity on federal lands." (emphasis added)

[51] Sagebrush Focal Areas Withdrawal Environmental Impact Statement Idaho, Montana, Nevada, Oregon, Utah, and Wyoming Draft EIS, December 2016 at iv-v.

> the collective LUP amendments and associated RODs from 2015 recommended that the agency seek to have the Secretary withdraw the SFAs from location and entry under the Mining Law under section 204 of FLPMA."

Since the original purpose and need for mineral withdrawals was articulated by BLM in 2015, the need to establish mineral withdrawals to protect greater sage-grouse habitat is even more acute. Greater sage-grouse population and habitat trends are still declining and mining threats to greater sage-grouse habitat have dramatically increased. Mineral withdrawals are an essential management tool to protect federal public lands, 1) *from* mineral entry (i.e., claim staking); and 2) *for* conservation ("to maintain other public values in the area or reserving the area for a particular public purpose or program").

Absent mineral withdrawals, the DEIS fails to demonstrate how the alternatives, including the preferred alternative, will meet the stated goals and objectives, including those to a) uphold disturbance caps, b) maintain and enhance habitat conditions in PHMAs, and maintain existing connectivity between GRSG populations, and c) achieve no net habitat loss. Further, absent a withdrawal recommendation, BLM cannot preclude the likelihood of listing as required by the special status species policy or provide sufficient regulatory mechanisms to preclude a warranted finding. At a minimum, BLM should recommend for withdrawal all PHMA and lek buffer zones.

C. The DEIS fails to take a hard look at hard rock mining as required by NEPA.

According to the DEIS (p. 2-11), "Priority Habitat Management Areas (PHMA) have the highest value to maintaining sustainable GRSG populations and can include breeding, late brood-rearing, winter concentration areas, and migration or connectivity corridors." The BLM objective (DEIS, p. 2-10) for these areas is to *maintain and enhance habitat conditions* that will support persistent and healthy GRSG populations through management to minimize habitat loss and degradation. It further states that "Habitat conservation and management should *maintain existing connectivity* between GRSG populations."

As noted in DEIS (Vol. 3, p. 13-3-14), regions in Idaho, Oregon, and Nevada have had sharp increases in the average number of annual mining claims since 2016. Within PHMAs in Nevada and California combined, about 147,160 existing active mining claims exist across 21,167,000 acres of BLM-administered locatable minerals. Assuming these are primarily lode claims (20 acres in size), approximately 14% of the PHMA in Nevada and California are currently covered by existing active mining claims. The DEIS failed to disclose this.

The DEIS fails to provide maps and locations of mining claims relative to GRSG populations to identify the habitat that provides essential connectivity between populations. This information is necessary to compare RMP alternatives and analyze the cumulative effects of locatable mineral development on GSG and GSG habitat. More importantly, the DEIS

fails to demonstrate how the BLM will achieve these objectives absent mineral withdrawals.

According to the DEIS (p. 2-22), the objective for alternatives 3 through 6 is to "achieve a minimum no net habitat loss (full restoration of functional habitats or enhancement of habitats such that it offsets the loss of capacity in impacted areas)." The BLM (DEIS, p. 2-22) intends to reduce impacts to greater sage-grouse habitat via a three-pronged mitigation hierarchy (avoidance first, then mitigation, compensation last). The DEIS states that impact avoidance in GRSG habitats is the priority since restoration of most sagebrush systems can take decades. Yet, the DEIS fails to explain how BLM will avoid impacts to GRSG habitat under the 1872 Mining Law.

According to the DEIS, the BLM could use its authority under FLPMA to mitigate impacts to prevent unnecessary or undue degradation (UUD). However, we are not aware of any mining operations in which the BLM has applied UUD to protect greater sage-grouse and its habitat. The DEIS should provide an example of where it has applied UUD to protect greater sage-grouse and its habitat from proposed mineral development, and specify the level of direct, indirect or cumulative impact to greater sage-grouse and its habitat that would trigger BLM to apply its authority under UUD.

The DEIS also fails to demonstrate how avoidance or mitigation will be achieved for notice level mining operations because NEPA analysis is not required. Finally, the DEIS (p. 2-23, 2-24) states that compensatory mitigation, the third mitigation strategy, is not required for alternatives 3-6: "for alternatives 3-6 compensatory mitigation is not required by the BLM for operations conducted under the Mining Law of 1872, but operators may always voluntarily engage in compensatory mitigation."

Given the BLM's stated inability to require mitigation strategies to avoid, mitigate or compensate for locatable mineral development impacts within the planning area, the DEIS fails to demonstrate how the RMPs will achieve goals and objectives absent mineral withdrawals, nor does it take a hard look at the consequences.

D. BLM fails to adequately analyze the direct, indirect and cumulative mining impacts.

Chapter 4 (Environmental Consequences) fails to take a hard look at the potential direct, indirect and cumulative effects of mineral exploration and development within the planning area, which is necessary to compare the alternatives (with and without recommended mineral withdrawals) and understand the potential of the various alternatives to achieve the stated sage grouse conservation goals and objectives.

The number of active mining claims for locatable minerals on federal lands has escalated. According to the Interagency Working Group on Mining, "over 489,000 active claims were recorded at the end of Fiscal Year 2022 - *the highest number of active mining claims this century*, an indication of significantly increased interest in exploring for and developing minerals on federal lands." (emphasis added) The DEIS (p. 13-3-14) states that "Regions in Idaho, Oregon and Nevada have had sharp increases in the average number of annual claims filed since 2016. According to the DEIS, (p. 13-3-14) "Within GRSG priority habitat management areas (PHMAs), Nevada and California, combined, have about 147,160 existing open claims across 21,167,000 acres of BLM-administered locatable minerals." Assuming these are primarily lode claims (20 acres in size), upwards of 14% of the PHMA in Nevada and California could currently be covered by locatable mining claims.

It is reasonably foreseeable that mineral exploration and/or development may occur on a portion of these claims and new claim staking may occur within the 20-year planning period, resulting in direct, indirect and cumulative impacts that must be analyzed in order to understand the potential impacts of locatable mineral development, with and without withdrawals, on already declining population and habitat trends.

The "No Action" alternative for the 2016 Sage Grouse Focal Area Mineral Withdrawal DEIS analyzed the potential effects of locatable mineral development over a 20-year period on roughly 10 million acres of federal lands (Sagebrush Focal Areas), subject to compliance with all applicable laws. It estimated direct impacts to 108 leks and 961 males and indirect impacts to 386 leks and 8,331 males. That analysis, which is eight years old, likely underestimates today's impacts of locatable mineral development within that area, given the sharp increase in claim-staking since 2016. However, this is an example of the type of quantitative analysis that is necessary to analyze impacts and compare alternatives (with and without recommended withdrawals) in this DEIS.

Section 4 (DEIS, p. 4-108) includes some information on the plans of operations, exploration projects and notices in the planning area and within SFAs, but it is incomplete. In Idaho, it states that there are 56 plans of operations and notices currently authorized within the decision area - 7 of those are within the SFA that were previously recommended for withdrawal. It also provides information for Oregon (117 mining claims, 1 plan of operation and 9 exploration notices in SFA), but it fails to provide the same information for California and Nevada.

The Cumulative Effects Supporting Information (DEIS, Table 14-1, p. 14-1) outlines some past, present and reasonably foreseeable actions, but fails to provide a complete list of major existing, proposed or recently approved mining operations, or describe the potential cumulative effects to greater sage-grouse and its habitat. Even when a major operation (e.g., Gold Rush, Thacker Pass, Robertson) is listed, the DEIS omits essential information, including whether it is located in PHMA, on or adjacent to leks, or its cumulative effects.

The Cumulative Effects Appendix also includes tables (Table 14-3, 14-6, 14-9, 14-12, 14-15, 14-18, 14-21, 14-24), that describe the acreage of proposed withdrawals per HAF unit per alternative, but fail to include the acreage of existing mining claims within the proposed withdrawal area that may now be subject to mineral exploration and development under the 1872 Mining Law. Without that information, it is impossible to determine the amount of greater sage-grouse habitat potentially subject to valid existing rights in the various alternatives that would actually be withdrawn from mineral entry and location under the 1872 Mining Law if the proposed mineral withdrawals were authorized.[52]

The DEIS fails to take a hard look at these impacts and fails to provide data or analysis to support its decision to forego recommendations for mineral withdrawals in the preferred alternative in light of the requirements of the 1872 mining law, the ongoing declining trends in greater sage-grouse habitat and populations, and increases in mining activity and interest.

VIII. Update provisions related to vegetation and restoration projects to incorporate recent relevant science and conserve special status species.

BLM's obligation for managing sensitive species is to promote their conservation and to minimize the likelihood and need for listing under the ESA[53] utilizing high quality information.[54] In managing for sage-grouse over the past decades, BLM has "treated" vegetation to improve sage-grouse habitat . These projects take multiple forms and can involve removing sagebrush, thinning sagebrush, cutting pinyon and pine woodlands, removing invasive species through a variety of means, and burning vegetation. The outcomes of these types of projects are mixed and some are clearly detrimental for sage-grouse (Jones 2019; Bombachi and Pejchar 2016)[55]. Further, these types of projects can have negative outcomes for other ecosystem components such as soil, native grasses and forbs, and other native species including, importantly, other sensitive species such as the pinyon jay[56] and pygmy rabbit (Jones 2019; Jones 2023; Bombachi and Pejchar 2016; Floyd 2021)[57] and often result in significant increases in invasive plants that impact fire cycles and native biodiversity.

[52] For example, as noted above, (DEIS, p. 4-108) there are 56 plans of operations and notices currently authorized within the decision area in Idaho; 7 of those are within the SFA that were previously recommended for withdrawal. What is the size of the 7 POOs that are within the SFAs previously recommended for withdrawal, and how might the development of those POOs alter the proposed withdrawals within the two alternatives.
[53] BLM Manual 6840 Sections .06 and .2.
[54] 43 CFR § § 6101.4, 6102.2, 6102.3, 6102.3.1, 6102.4, 6102.5, 6103.1.2, and 6103.2.
[55] Also 12 month finding (2010), supra.
[56] Petitioned for listing and under 12 month review. See Defenders of Wildlife 2022.
[57] Petitioned for listing and under 12 month review. See Jones 2023.

Managing for a single species – i.e., sage-grouse -- over native ecosystem integrity can lead to unintended consequences for the larger ecosystem and for other species. Similarly, conducting vegetation treatments absent a rigorous restoration framework and process, as BLM has often done and at times continues to do, can be detrimental to ecosystem integrity and long-term sustainability. BLM's recently promulgated Conservation and Landscape Health Rule clarifies that BLM should be managing for ecosystems and their components[58] and provides a restoration framework that articulates overarching principles and specific requirements for restoration planning and project implementation.[59] Especially germane to these RMPAs are the requirements to 1) use native seed, 2) adhere to scientifically accepted restoration principles and standards, 3) develop clearly articulated goals and objectives that address the causes of degradation, and 4) track progress towards achieving restoration outcomes.

The DEIS states at I-9 that the sections of the 2015 (as amended by 2019) RMPAs related to restoration are not being amended in this planning effort because the existing direction is sufficient and reflects current science. (Note that while BLM is not modifying range-wide requirements, it is modifying requirements for Montana, Nevada and California.[60]

We disagree with BLM's contention that the existing vegetation management and restoration-related provisions are sufficient to meet the purpose and need of this planning effort, which includes a need to update management approaches based on new science. DEIS at I-5. Since 2015 and 2019, significant new relevant information has been published. This includes studies and reports on:

- Population data related to pinyon jay and pygmy rabbit;[61]
- Restoration principles, standards, and practices;[62]
- The effects of sagebrush treatments;[63]

[58] 43 CFR § 6101.2 ("Manage for ecosystems and their components to adapt, absorb, or recover from the effects of disturbances or environmental change through conservation, protection, restoration, or improvement of essential structures, functions, and redundancy of ecological patterns across the landscape"

[59] 43 CFR § 6102.3 and § 6102.3.1 (Requires articulation of restoration goals and objectives and the causes of degradation that restoration activities are designed to address; requires measurable and quantifiable outcomes; requires that projects are developed consistent with scientifically accepted standards and principles for restoration; requires tracking of restoration implementation and progress toward achieving goals at appropriate temporal scales, and corrective action when projects are not achieving goals and objectives, among other things).

[60] DEIS at 2-158, 169, and 170.

[61] See Defenders of Wildlife 2022 and Jones 2023

[62] See Gann et al. 2019 and Pedrini et al. 2020. Both publications reflect state of the art standard and principles related to restoration.

[63]Smith et al. 2023 demonstrated that sagebrush treatments were harmful or at best neutral to sage-grouse. They completed a nine-year study to better understand how greater sage-grouse respond to sagebrush reduction treatments in Wyoming big sage-grouse communities. The authors conclude "Results from our

- The effects and eco-cultural considerations[64] involved in cutting down pinyon and juniper forests;[65] and
- The dynamics and trends of pinyon-juniper ecosystems.[66]

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study add to a large body of evidence that sage-grouse using Wyoming big sagebrush vegetation communities do not respond positively to sagebrush manipulations treatments. Management practices that focus on the maintenance of large, undisturbed tracts of sagebrush will best facilitate the persistence of sage-grouse populations and other species reliant on the sagebrush steppe." Jones (2019) conducted an extensive review of the literature to evaluate the effectiveness of mechanical treatment projects in pinyon juniper and sagebrush systems. Jones found that of the 11 studies of sagebrush treatment effects on sage grouse, four were positive, three were negative, and four showed no significant effects. That is, only 36% showed benefit to sage grouse. In sagebrush communities, the majority of treatments (75% and 64% for native forbs and grasses, respectively) had non-significant or negative effects. For non-native grasses and forbs, studies were almost evenly divided between no significant response and positive (increase) response (24% and 26%, respectively).

[64] See, e.g., Eisenberg et al. (2024).

[65] Shineman et al. (2023) reviewed papers published between 2014 and 2021 that looked at effects of vegetation treatment in pinyon and juniper woodlands in the interior west. They cataloged effects documents in 48 papers that primarily examined treatment effects on vegetation and other environmental variables and 11 papers that addressed effects on wildlife. They found that there were large proportions of non-significant responses among all categories combined, with roughly half or more of all responses non-significant (48 percent for wildlife, 60 percent for vegetation-environmental), comparable to other recent systematic reviews of pinyon-juniper treatment effects. When there were significant responses they found far more positive than negative responses of exotic grass and forb abundance among nearly all treatment types. Cutting treatments were also more likely to decrease biocrust cover and microbial activity. They also found mostly positive responses among sagebrush obligate species, including more positive than negative responses for mule deer and sage-grouse. Bombaci and Pejchar (2016) also conducted an extensive review of the literature to evaluate the effectiveness of mechanical treatment projects in pinyon juniper woodlands on wildlife. Just as Shinneman et al. (2023) found, mechanical removal of pinyon-juniper mainly resulted in non-significant to negative effects on wildlife.

[66] See Redmond et al. (2022) that addresses the urgent need for managing future drought resilience in semiarid pinyon–juniper woodlands, which have experienced extensive tree mortality and expansion in recent decades. The authors propose a landscape prioritization framework to guide management practices based on historical woodland structure, current vegetation composition, future climate suitability, and habitat value. Emphasizing the importance of adaptive management strategies, the paper highlights critical knowledge gaps and calls for improved management of these ecosystems undergoing substantial changes due to land use, biological invasions, and climate change. Also see Shriver et al. (2022) that addresses the challenge of predicting range shifts in response to climate change for dry forest tree species, focusing on pinyon pine and juniper in the Western United States. By developing range-wide demographic models, the authors assess both mortality and recruitment rates to understand where species range contractions are occurring. They find that four out of five species are declining in parts of their range, with Pinus edulis showing the highest vulnerability, particularly in warmer and drier conditions. The paper underscores the importance of considering both mortality and recruitment in assessing population trends and highlights the urgent need for management actions to mitigate the impacts of increasing temperatures and drought on these species' long-term viability. Also see Noel et al. (2022) that looks at climate drivers and management options for pinyon pine and juniper species. Also see: National Park Service (2024).

The updated science is not adequately reflected in the no action alternative . For instance, the CA/NV 2015 RMPA includes the following objective and chart for cutting down pinyon-juniper woodlands to benefit sage-grouse without appropriate consideration for the fate of the pinyon jay or the fate of the pinyon and juniper ecosystems and species, which are suffering climate change stress (Redmond et al. 2022; Shriver et al. 2022).

> Objective VEG 4: In accordance with the vegetation dynamic development tool (VDDT; Appendix L), improve GRSG habitat by removing invading conifers in the number of acres shown in Table 2-2 by decade for the next 50 years.

Table 2-3
Conifer Treatment Acres per Decade

State	Mechanical Treatment[1]	Prescribed Fire[2]
Nevada	649,000	8,000
California[3]	34,000	10,0000
Total	**683,000**	**18,000**

[1]Removal of conifers that have invaded sagebrush, generally phase one juniper that is 10 percent or less.
[2]Acres are those that are greater than 30 percent sagebrush canopy cover and/or invaded by 10 percent or greater conifer.
[3]BLM California-managed lands will be consistent with annual acres of treatment specified in the Sage Steppe Ecosystem Restoration FEIS (BLM 2008).

Similarly, the Oregon and Wyoming 2015 RMPAs include objectives that do not reflect updated science around the effects of cutting sagebrush:

> Objective VEG 4: Thin sagebrush stands that exceed 30 percent cover in cool-moist sagebrush and 25 percent cover warm-dry sagebrush to no less than 15 percent cover within 4.0 miles of all occupied or pending leks.
>
> MD VEG 3: Within PHMAs, specific to management for GRSG, all RMPs are amended as follows: For vegetation treatments in sagebrush within PHMAs, refer to Appendix H, WGFD Protocols for Treating Sagebrush to Benefit Sage-Grouse (WGFD 2011, as updated) and BLM Washington Office Instruction Memorandum 2013-128 (Sage-grouse Conservation Related to Wildland Fire and Fuels Management).

In regard to the use of native seed, the 2015 RMPAs give generally similar direction to use native seed unless probability of success is low or seed is hard to obtain. The 2015 RMPAs do not offer direction around native seed supply planning, which leads to a cycle of not using genetically-appropriate native seed in revegetation and restoration projects for lack of availability and/or lack of understanding and expertise around successful native seed planting.[67]

[67] In 2020 BLM 7/8ths of the grasses and ¾ of the forb seeds that BLM purchased for its national seed warehouse were not native source-identified seeds (National Academy of Sciences 2023).

Amending vegetation and restoration plan components so that they reflect updated science is important to meet the purpose and need of this DEIS and to comply with BLM's special status species policy and the provisions of the new BLM rule. It is also important in the context of compensatory mitigation; BLM should not be crediting third parties for potentially harmful (or neutral) revegetation and restoration projects.

We recommend BLM establish range-wide requirements including, but not limited to,

- Remove sagebrush removal/thinning as an available restoration activity since it has been demonstrated to be ineffectual or harmful;
- Remove acreage targets for pinyon and juniper tree removal as they are not based on updated understanding of the trends of pinyon and juniper ecosystems and species;
- Require on-the-ground surveys of pinyon jays and pinyon pines and consultation with tribes before designing or implementing pinyon-juniper removal projects, and consider rangewide health of the specific pinon and juniper ecosystems in question before removal occurs;
- Require native seed supply planning[68] and the use of native seeds as promoted by the National Academy of Sciences (2023) and Society for Ecological Restoration (Gann et al. 2019; Pedrini et al. 2020);
- Require restoration planning and tracking that comports with Gann et al. (2019) and the Conservation and Landscape Health Rule and promotes shared learning and evaluation of restoration activities at multiple scales; and
- Rest restored areas from livestock grazing until habitat objectives are attained.

IX. Conclusion

The greater sage-grouse remains on an extinction trajectory. While the 2015 RMPAs were an unprecedented cooperative effort to address a declining species across its range, the amendments (now weakened by the 2019 RMPAs) have proven insufficient to curb the greater sage-grouse declines and put it on a path to recovery. BLM has an opportunity with this third set of RMPAs to strengthen existing plans by applying new science, better understanding of the scope and magnitude of climate change on greater sage-grouse habitats, and lessons learned from nine years of RMPA implementation. In this comment letter, we offer specific recommendations for strengthening the preferred alternative and

[68] The report entitled ON FIRE: The Report of the Wildland Fire Mitigation and Management Commission (September 2023) included Recommendation 78: "Develop the seed capacity necessary to support post-fire restoration and revegetation in a manner considerate of historic and future disturbance regimes, biodiversity, and ecosystem process and function." See https://www.usda.gov/sites/default/files/documents/wfmmc-final-report-09-2023.pdf.

the impact analysis that if implemented would offer better regulatory assurances that BLM's management will abate habitat loss and fragmentation.

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Attachments

Attachment 1 – Analysis of lek buffer zone management under certain alternatives.

Office of the
CHURCHILL COUNTY COMMISSIONERS

Myles Getto
Justin Heath
Bus Scharmann

June 6, 2024

Bureau of Land Management
Attn: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

Via Email: BLM_HQ_GRSG_Planning@blm.gov

RE: Churchill County, Nevada Comments to the Greater Sage-Grouse Rangewide Planning Draft Resource Management Plan Amendment and Draft Environmental Impact Statement (DOI-BLM-WO-2300-2022-0001-RMP-EIS)

Dear BLM Greater Sage-Grouse Planning Team:

Churchill County, Nevada (County) appreciates the opportunity to provide these comments to the above-listed Draft Resource Management Plan Amendment and Draft Environmental Impact Statement (Draft Plan). The County has been an active Cooperating Agency on this Draft Plan from the beginning and has significant concerns with both the process and product to this point. Concerns have been previously relayed during Scoping Comments and during Cooperating Agency participation.

The County has potential for significant impact from this Land Use Plan Amendment as the eastern third of the County contains Greater Sage-Grouse habitat. Further, maintenance of multiple use management and public land use is critical to the County's culture, customs and economy. The County supports conservation and active management of wildlife, including Greater Sage-Grouse, but such conservation must be informed by knowledgeable on-the-ground management.

The County's 2020 Master Plan includes a Policy Plan for Public Lands (Chapter 12). The below Goals, Primary Planning Guidance and Policies are included under the "Wildlife and Wildlife Habitats" section:

> ***GOAL**: Churchill County recognizes the value of healthy wildlife populations and their habitat and strives to support efforts to protect, preserve, manage, and restore wildlife and its habitats for their aesthetic, scientific, educational, recreational, and economic benefits to its citizens. We support wise human use of wildlife through consumptive and non-consumptive uses. The County is committed to the maintenance and enhancement of the diverse wildlife habitats that occur here. When appropriate and the opportunity is available, we will work to enhance citizen understanding of the County's wildlife resources and how they may enhance the quality of life of its citizens and visitors.*
>
> ***PRIMARY PLANNING GUIDANCE**: Churchill County recognizes that wildlife resources in Nevada belong to the people of the state and the protection, management, restoration, and use of these resources are the responsibility of the State. We also recognize that public input with regard to management and use of wildlife resources in an important part of the process, and the appropriate*

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Churchill County, Nevada, is an equal opportunity provider and employer.

vehicle for that input is through the Churchill County Advisory Board to Manage Wildlife to the Nevada Board of Wildlife Commissioners.

***OBJECTIVES**: Churchill County supports, and it is our objective to continue to support:*

1. The active protection and management of wildlife habitats within the county.

Given the County's recognition that wildlife management is the responsibility of the State of Nevada, the County only supports a BLM Plan that is consistent with the 2019 State of Nevada Greater Sage-Grouse Conservation Plan (Nevada Plan).

The below comments have been organized by major topical area as follows:

Planning Area & Complexity of the Draft Plan:

The County is extremely concerned with the "rangewide" planning area and subsequent complexity of this plan. Developing a single Draft EIS that evaluates changes across 76 BLM Resource Management Plans is nearly impossible to accomplish, particularly given the diversity of habitat types, differing threats, variable land uses and state management authorities across the entire range of Sage-Grouse. This was compounded by the BLM's proposing 6 different alternatives for evaluation.

This Draft EIS is extremely complex, and nearly impossible to follow, even for those who have worked on it closely through the Cooperating Agency Process. The Draft Plan consists of three volumes, plus 19 Appendices, making it nearly impossible to track in a cohesive manner. The County is also concerned that this regionalized planning effort runs astray of Congressional Direction provided to the BLM. Please see attached, Churchill County Concern with BLM Multi-State Planning Efforts

Recommendation: The County contends that the BLM must publish a Supplemental Draft LUPA / EIS specific to the State of Nevada, so that cooperators and the public in this state can clearly understand the range of alternatives and what is being proposed. Ultimately, the final Nevada Land Use Plan Amendment must be signed by the Nevada State Director and not the BLM's Washington Office.

Mapping:

The mapping presented in the Draft Plan is incomplete, misleading, and wrong. During the Cooperating Agency process, the County pointed out where the maps were inaccurate particularly as relates to the maps presented in Alternatives 3 – 6. Important areas of the County such as the Dixie Valley, Stillwater National Wildlife Refuge and Sand Mountain Recreation Area were mapped as habitat, even though it clearly is not when viewed from a boots-on-the-ground perspective, nor does it have the ecological potential to be.

The maps associated with Alternative 3 – 6 should have never been published as they were based on incomplete USGS models that had yet to be completed, reviewed, or adopted by the State of Nevada. The County notes that the BLM provided notification that the maps were likely to change and even posted a "comparison" document late in the review period, but that doesn't excuse the publication of incomplete maps. The maps link directly to allocations decisions, so incomplete or inaccurate maps can have a tremendous negative impact on the County.

Recommendation: ***The BLM must publish a Supplemental Draft LUPA / EIS specific to the State of Nevada, so that cooperators and the public in this state can clearly understand the true mapping updates have been completed and accepted by the State of Nevada and impacts of the allocation decisions associated with the habitat classifications.***

Alternatives:

The current plan considers so many alternatives that in some cases they are radically different and in others they seem to largely be designations without a differentiation. The most problematic issue is that six alternatives have made this Draft EIS nearly impossible to follow. There is a significant need for a more focused set of alternatives so future input can focus on key refinements.

- Alternative 1 (2015 Land Use Plan Amendments): This alternative is fatally flawed in that it is inconsistent with the State Plan and does not contain key exceptions for County administrative and emergency functions.

- Alternative 2 (2019 Land Use Plan Amendments): This alternative is the most consistent with the State Plan, and subsequently the County's Master Plan. It provides key provisions for County administrative and emergency functions in Greater Sage-Grouse Habitat and contains mapping that was approved by the State of Nevada.

- Alternative 3 (Preservation including Areas of Critical Environmental Concern): This alternative is fatally flawed because it is inconsistent with the State Plan, inconsistent with the County's Master Plan and would have significant socioeconomic impacts on the County due to its restrictive nature. Another fatal flaw includes the fact that all habitat management areas would be designated as "priority". Given that the County has documented how this map includes non-habitat, this would be hugely problematic. Finally, the County questions how this alternative is consistent with the BLM's own multiple use mandate.

- Alternative 4 (Conservation focus with situation allowance for development): This alternative is fatally flawed as it relies on incomplete and incorrect maps. There are also inconsistencies with the State Plan and the County's Master Plan.

- Alternative 5 (Conservation focus with additional flexibility): This alternative is fatally flawed as it relies on incomplete and incorrect maps. There are also inconsistencies with the State Plan and the County's Master Plan, though they are less than in Alternative 4.

- Alternative 6 (Alternative 5 with Areas of Critical Environmental Concern): This alternative is fatally flawed as it relies on incomplete and incorrect maps. There are inconsistencies with the State Plan and the County's Master Plan, and the County does not support the designation of Areas of Critical Environmental Concern as it would result in focusing conservation measures and active management to areas outside of Churchill County.

Recommendation: ***The County recommends dropping Alternatives 3, 4 and 6 from further consideration due to inconsistencies with the State Plan, local plans, and allowances for critical County functions. Alternatives 1, 2 and 5 should be carried forward and presented in a Nevada specific Supplemental Draft EIS for further analysis, input, and refinement.***

Special Designations, Allocations and Exceptions:

1. The County does NOT support special designations (ACECs or Sagebrush Focal Areas [SFA]). The County just completed an extensive land bill process that designated significant portions of critical Sage-Grouse habitat Wilderness Areas. Designation of ACECs or SFAs would likely direct active conservation projects away from the County, when active conservation and enhancement projects are very much needed in the County, including within designated Wilderness Areas.

2. The County supports the below allocation table with the key provision that all allocations be subject to ground truthing of mapped habitat. The BLM must understand that the USGS mapping product is based on models (the report states this very plainly). Nearly all the habitat designated in this County has not been verified, and the County has documented its concerns with the accuracy of some of the modeled habitats. Even in verified habitat, the County must have the latitude to provide mandated administrative and emergency functions.

Table 2-1: Summary of Allocation Decisions by GRSG Habitat Management Areas[1]. (NV Counties 2023)

Resource	PHMA	GHMA	OHMA	ACEC
Land Tenure[2]	Retain	Retain / Dispose	Dispose	**Nevada Counties do NOT support the designation of ACECs as part of this planning effort.**
Solar, Wind and Renewable Energy Storage	Exclusion	Exclusion[2]	Avoidance[2]	
Major ROWs[2,3]	Avoidance	Avoidance	Open	
Minor ROWs[2,3]	Avoidance	Open	Open	
Fluid Mineral Development and Leasing	Closed	Open w/ Major Stipulations[2]	Open w/ Minor Stipulations[2]	
Nonenergy Leasables[2]	Closed	Open	Open	
Salable Minerals[2]	Closed	Open	Open	
Locatable Minerals[4]	Open	Open	Open	
Travel Management	Limited[5]	Limited[5]	Open	
Livestock Grazing	Open	Open	Open	

Notes:
1. All Allocation Decisions are subject to field verification and modification of modeled HMA.
2. Projects may qualify for a BLM waiver, exemption, or modification (WEM) and must meet the regulatory requirements of the State of Nevada, including the Conservation Credit System.
3. Projects located within designated corridors, co-located with existing infrastructure, or located in degraded habitat will be given WEM preference.
4. Projects must meet the regulatory requirements of the State of Nevada, including the State Conservation Credit System.
5. Not applicable to State, local or public roads. Travel is limited to existing roads and trails.

Recommendation: ***The County recommends that the BLM designate a "Preferred Alternative" within a Nevada-specific Supplemental Draft Environmental Impact Statement that contains the above allocation table, clear provisions for ground truthing modeled habitat before final allocations decisions are made, and provisions for the County to provide administrative and emergency functions.***

Adaptive Management:

The County only supports the Adaptive Management process proposed under Alternative 2 as it is the only one that is consistent with the State of Nevada's Adaptive Management Process. The

County would question if the proposed Adaptive Management Approaches under the other alternatives are consistent with the Department of Interior's Handbook on Adaptive Management.

Recommendation: ***The County recommends that the BLM designate a "Preferred Alternative" that contains the Nevada-specific Adaptive Management Plan as described in Alternative 2.***

This is the third time the BLM has developed Sage-Grouse specific Resource Management Plan Amendments that impact Churchill County. As experienced by previous RMP Amendments, these policies have the potential to greatly affect public land use as well as County functions. When the BLM's RMP is not synchronized with the State Plan, it results in confusion and ineffective management at the expense of the Counties and affected land users. The BLM needs to take the time to get this planning effort correct, and not make the same mistakes as experienced in previous planning efforts (i.e. publishing incomplete maps also occurred in 2015 resulting in the BLM and State utilizing different habitat maps for approximately 6 years).

The County appreciates the opportunity to provide these comments and will continue to remain engaged. If there are any questions as to the comments provided, please contact County Manager Jim Barbee, or the County's Public Lands and Natural Resources Consultant, Jeremy Drew.

Thank you,

Myles Getto, Chair
Churchill County Board of Commissioners

JLD/pm

cc: Governor Joe Lombardo
County's Congressional Delegation
Jon Raby, Nevada State Director, BLM
Kim Dow, Carson City District Manager, BLM

Attachments: Churchill County Concern with BLM Multi-State Planning Efforts
Churchill County's Document Specific Comments

Churchill County, Nevada
Concern with Bureau of Land Management Regionalized Planning Efforts

The Issue: Churchill County, Nevada is concerned that the BLM is currently engaged in two centralized, multi-state land use planning efforts that appear to violate both 1) the BLM's existing planning regulations, and 2) Congress's explicit prohibition of centralized, multi-state planning through its 2017 exercise of the Congressional Review Act,[1] which struck down the BLM's "Planning 2.0" regulations. These two planning efforts include:

1. The Draft Programmatic Environmental Impact Statement for Utility-Scale Solar Energy Development (DOI-BLM-HQ-3000-2023-00001-RMP-EIS); and,
2. The Greater Sage-Grouse Rangewide Planning Draft Resource Management Plan Amendment and Draft Environmental Impact Statement (DOI-BLM-WO-2300-2022-0001-RMP-EIS)

Background: In 2016, in the waning days of the Obama administration, the BLM attempted to transform how the agency conducted land use planning under the Federal Land Management Policy Act (FLPMA) by writing new regulations which they called "Planning 2.0." Among the tried-and-true planning regulations the BLM hoped to discard through this rulemaking were 1) the allocation of planning responsibilities to *local* BLM authorities; 2) the geographic restriction of land use plans, revisions, and amendments to the *local* BLM administrative boundaries of Field, District, and State Offices.

The long-standing local emphasis of BLM land use planning had ensured that land use plans were tailored to the specific needs and concerns within individual Field Offices or Districts and guaranteed meaningful coordination between the State, Field, and District BLM agency personnel and local and state governments. Specifically, the pre-Planning 2.0 regulations required land use plans to be *administratively local*, that is, carried out by Field Managers with the oversight and approval of State Directors—

§ 1601.0-4 Responsibilities.

a) National level policy and procedure guidance for planning shall be provided by the Secretary and the Director.
b) State Directors will provide quality control and supervisory review, including plan approval, for plans and related environmental impact statements and provide additional guidance, as necessary, for use by Field Managers. State Directors will file draft and final environmental impact statements associated with resource management plans and amendments.
c) Field Managers will prepare resource management plans, amendments, revisions and related environmental impact statements. State Directors must approve these documents. 43 CFR § 1601.0-4 (emphasis added.)

Second, the pre-Planning 2.0 regulations ensured that the BLM's planning efforts would also remain *geographically local*, stipulating that:

> "A resource management plan shall be prepared and maintained on a resource or field office area basis, unless the State Director authorizes a more appropriate area." 43 CFR § 1610.1(b)

By contrast, in the Planning 2.0 rulemaking, the BLM attempted to eliminate both the local administrative and geographic focus of land use planning by centralizing all planning authority in the BLM's Washington D.C. headquarters and allowing centralized land use planning efforts to have potentially unlimited geographic scope. As the BLM explained in its preamble to Planning 2.0 in the Federal Register—

> *Responsibilities and Plan Boundaries*

[1] 5 U.S.C. §§801- 808.

Churchill County, Nevada
Concern with Bureau of Land Management Regionalized Planning Efforts

> "The proposed rule would explain the responsibilities for preparing or amending a resource management plan to acknowledge that planning areas may extend beyond traditional BLM administrative boundaries such as Field Offices or States. References to the "Field Manager" would be replaced with the "responsible official," as the BLM official responsible for preparing and amending a resource management plan. References to the "State Director" would be replaced with the "deciding official," as the BLM official responsible for supervisory review, including plan approval.
>
> The proposed rule would make the BLM Director responsible for determining the deciding official and the planning area for resource management plans and for plan amendments that cross State boundaries. For plan amendments that do not cross State boundaries, the deciding official would be responsible for determining the planning area." 81 Fed. Reg. 9675 (emphasis added.)

Churchill County, in coordination with others and the Nevada Association of Counties, strongly objected to the BLM's attempt to centralize and expand the geographic scope of land use planning through Planning 2.0. Among our many concerns was that Washington-driven, multi-state planning would eliminate meaningful state and local government participation as required under FLPMA and NEPA. As part of a broad effort to halt Planning 2.0, Humboldt County, Nevada, Commissioner Jim French testified before Congress stating our collective view that BLM land use planning must remain local, as did Jeff Fontaine, then the Executive Director of the Nevada Association of Counties [and others?].

On March 27, 2017, Congress struck down the BLM's Planning 2.0 rule through the Congressional Review Act. Under a Joint Resolution, Congress forbade (among its other provisions) Planning 2.0's centralized land use planning scheme and its authorization of unbounded multi-state planning areas. Under the CRA, Congress also forbade the BLM to issue "a new rule that is substantially the same" as Planning 2.0, "unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule." 5 U.S.C. § 801(b)(2). As a result, the pre-Planning 2.0 regulations (quoted above) were reinstated and remain in full force and effect today.

The Problem: Currently, the BLM is engaged in two centralized, multi-state planning efforts that appear to violate the BLM's existing planning regulations and Congress's CRA Joint Resolution. Both plan amendment efforts and their attendant NEPA EISs are being centrally prepared by the Washington D.C. Office,[2] not by Field Managers. Further, "quality control and supervisory review, including plan approval" is being provided primarily by the BLM's Washington D.C. Office, not State Directors. Finally, these centralized planning efforts have planning areas of 10 to 11 states (effectively the BLM's entire land portfolio) as opposed to covering one or several Field Office administrative areas. For these reasons, the above-mentioned planning efforts appear to violate the below provisions of the BLM's planning regulations (and connectedly Congress's CRA prohibition on centralized, multi-state planning):

- "**Field Managers** will prepare resource management plans, amendments, revisions and related environmental impact statements;"
- "**State Directors** will provide quality control and supervisory review, including plan approval […] for plans…;"
- "A resource management plan shall be prepared and maintained on a **resource or field office area** basis, unless the **State Director** authorizes a more appropriate area." 43 CFR § 1610.1(b)

Request: Churchill County is requesting that the BLM reconsider these planning efforts and re-direct them to a State or District level process.

[2] The BLM's Eplanning website states that the lead office for Utility-Scale Solar is HQ-300 and for GRSG is WO-230.

Churchill County, Nevada Document Specific Comments to the Draft Rangewide Resource Management Plan Amendment and Evironmental Impact Statement (DOI-BLM-WO-2300-2022-0001-RMP-EIS)		
Section	**Figure / Table**	**Comment**
General Comment		The County is disappointed in the BLM's decision to provide such a limited timeframe for partners and the public to review and comment on this DEIS. The document is large and cumbersome, not to mention confusing, and a 90-day comment period is not sufficient for truly informed, substantive comments to be made. The County requests a Nevada-specific Supplemental Draf EIS be developed and published by the BLM in order to allow for more robust Cooperating Agency and public input and refinement.
General Comment		**Incomplete Maps:** There is a major NEPA inadequacy with the way in which the BLM included various mapping "alternatives" in the DEIS. The State of Nevada still has management authority over Sage-grouse and the only map that has been approved by the State appears to be Alternative 1, less the Sagebrush Focal Areas. "Alternative" Maps 2 - 5 are based on incomplete USGS Modeling products. This approach is both inaccurate and misleading, particularly given the number of tables and maps that cascade from these various alternatives. A clarifying statement is buried in Appendix 3 that reads "Because the final published and state-adopted HMA map was not available for BLM's draft EIS analysis needs, an interim draft map was provided and incorporated. The final map will be will be incorporated into the final EIS when it is published." (Appendix 3, Page 3-9). This approach truncates the State's approval process, appears to be pre-decisional and is extremely similar to the fatal mapping approach taken in 2015. Recall that the 2015 effort resulted in the BLM and State of Nevada using different maps for nearly 6-years. If the BLM must publish prior to the State of Nevada approving a new HMA map, then the only map that should be included for the State of Nevada at this time is the map provided in Alternative 1. Publishing incomplete modeling updates, particularly with HMAs that extend outside of State designated Population Managent Units and in and around cities and towns, sets a very bad precedent, is misleading to the public, and will result in inconsistent and ineffective management decisions. **The BLM needs to publish a Nevada-specific Supplemental DEIS with the correct maps and also needs to clearly articulate that the maps for the State of Nevada are based on a model and final allocation decisions may be subject to change based on field verification of mapped habitat categories.**
General Comment		**Consistency with State Regulations and Plans.** Througout the document, the BLM tends to suggest that the State of Nevada's only "regulatory mechanism" is the Conservation Credit System, and in some areas suggests that this is a "voluntary" requirement. That is inaccurate give that Nevada Revised Statute (NRS 232.162) establishes the Sagebrush Ecosystem Council and Nevada Administrative Code (NAC 232) requires mitigation for anthropogenic distrubances that result in direct or indirect impacts on Sage-grouse or their habitat on public lands. In addition, the 2019 Nevada Greater Sage-grouse Conservation Plan specifically states in Policy 3.1.2 that ***The State of Nevada's overriding policy for all management actions...is to "avoid, minimize and mitigate" impacts to sage-grouse habitat.*** Per its own policies (43 CFR Part 24), the BLM must coordinate with the State on matters of wildlife management. Since 2015, the BLM and project proponents have focused "coordination" simply on compliance with the CCS. However, the CCS only applies to "mitigation" and not avoidance and minimization measures that need to occur prior to mitigating residual impacts. BLM must coordination with the State on projects in relation to avoidance and minimization measures prior to any authorizations. The Plan needs to reflect this as well. **To ensure compliance with FLPMA consistency requirements (43 U.S.C. § 1712(c)(9)) with state and local plans and policies, the BLM must coordinate with State and local government agencies to ensure that the preferred alternative is consistent with the State and local plans to the maximum extent required by, and allowable under, federal law and executive order.**
General Comment		**Proposed Areas of Critical Environmental Concern.** The County does not support the proposed ACECs. The BLM needs to focus on completing accurate mapping, clearly articulating allocation decisions based on the mapping (includinga process for field truthing the modeled map), and coordinating with the State of Nevada. If the BLM could accomplish those three things, there is absolutely no need for ACECs. The ACECs don't appear to have any clear biological difference to areas of non-ACEC, they were not developed in cooperation with the State or other Cooperating Agencies and they do nothing to address the major threats to Sage-grouse in the State of Nevada (wildfire and invasive species). However, designating ACECs could certainly have a negative socio-economic to State and local governments, an analysis which is extremely limited and inadequate in this document. **Ultimately, the prefered alternative should NOT include ACECs as such would be inconsistent with State of Nevada and County plans.**
1.2.3		The County is concerned that the BLM may have "cherry picked" the "best available science" in some case, and in other cases disregarded previous science that is still valid. For example, the mapping contained in this document is NOT the "best available science" it was an incomplete model that hadn't been peer reviewed, published by the USGS or adopted by the State of Nevada. Yet, unpublished data on grazing and Sage-grouse produced by the University of Idaho wasn't included, nor was recent US Fish and Wildlife Service estimates of Raven populations.
2.2	NA	Table 2-1 from the 2015 ARMPA should be inlcuded in the description of each alternative, so it is clear as to the general allocation decisions the BLM is considering under each alternative.
2.2.3	NA	The County believes Alterantive 3 should be dropped from further consideration as it is not consistent with State or local plans and would result in significant negative socio-economic impacts.
2.2.4 & 2.2.5	NA	It is extremely difficult to differentiate the difference between Alternatives 4 and 5 based on this description.

2.2.6	NA	The County believes alterantive 6 should be dropped from further consideration as it is not consistent with State or local plans and would result in significant negative socio-economic impacts.
2.5	NA	Alternative 2 is most consistent with State and local plans than Alternative 5 (BLM preferred alternative). The BLM's process for this Plan was inheritnely flawed from the begining as it is nearly impossible to develop an RMP that is consistent across states when every state has a different approach to conservation of Sage-grouse as well as a different threat profiles. **Specific to Nevada, the BLM needs to work with the Cooperating Agencies to develop a Preferred Alternative that is more consistent with State and County plans.**
	Table 2-2	It concerns the County that the BLM has the same stated Goal for Alternatives 3 - 6. BLM classifies Alternative 3 as a "Preservation" alternative, which is not at all consistent with the State Plan, nor the County's policy to support Multiple Use Management. It also concerns the County that "...coordination and cooperation..." is isolated to "state wildlife agencies". Nevada has multiple Cabinet-level agencies that deal with critical aspects of Sage-grouse Management: NDCNR (Sagebrush Ecosystem Council - Sage-grouse / sagebrush conservation, Nevada Division of Forestery - fire, Nevada Division of Water Resources - water), NDA (livestock and weeds), NDOM (minerals)etc. The BLM also completely neglects to mention coordination and cooperation with local agencies or authorized users of public lands. This is a major flaw and exclusion.
2.6.3		See cover letter as relates to Mapping in Nevada and California.
	Table 2-3	Figures for Alternatives 3-6 are based on an incomplete model and unadopted map.
	Table 2-4	The only map that is consistent with the Nevada State Plan is Alternative 2, and that is now outdated. Alternatives 3 - 6 are based on incomplete and unpublished data. Alternative 3, making all habitat "Priority" is completely non-sensical. It is inconsistent with both the State of Nevada Plan and the USGS Modeling processes.
	Table 2-4	The County appreciates inclusion of the ability to "field verify" habitat. However, clear direction needs to be provided to BLM staff, that final allocation decisions are subject to such field verification, and the maps contained in this RMP are simply for planning and initial allocation decisions.
2.5.3		The statement, "The Principals of HAF can be used to measure habitat sufficiency in implementing mitigation." is not consistent with the State of Nevada Sage-grouse mitigation standards. The State of Nevada has a more robust process than what BLM is proposing through HAF.
	Table 2-5	The Application of the Mitigation Hierarchy is esstential and needs to better align with the State of Nevada definitions. The County appreciates the application of the mitigation heirarchy, but there needs to be a collaborative approach to determining "avoidance" and "minimization" with State and local governments. What the County has noticed is that the BLM often doesn't notify a Project Proponent that their authorization may not be issued early in the process resulting in excess time being spent on a doomed project. This is particularly true if BLM has a mandate, for example, too many renewable energy projects have been allowed to move forward in priority habitat, sometimes as the objection of the State and local governments. There needs to be a better aligned and better defined approach for how adequate "avoidance" and "minimization" has been acheived. Perhaps there is a pre-application checklist needed for discressionary authorizations in GRSG Habitat that defines if a project is consistent with BLM, State and local policies and if the project has done enough to "avoid" and "minimize" impacts before it moves forward to a formal application.
2.6.3	2-11	This paragraph does not appear to be consistent with the State of Nevada's Mitigation laws and regulations. The Counties defer to the SETT to clarrify this language to be consistent with the State's processes.
General Comment		The way these tables are arranged is extremely difficult to understand, particularly given Alternatives 1 and 2 are merging all states into one column. The County re-itterates that this process should have been conducated on a State-by-State basis and not a range-wide basis.
	Table 2-5	The Mitigation Hierarchy needs to be applied in cooperation and coordination with the respective State, given each State's authority to managed Sage-grouse Populations. Further, the BLM needs to make clear here that in addition to BLM regulation, project proponents MUST be in compliance with all State Regulations related to mitigation. The County agrees that some authorizations should be denied; however, this decision should be completed in cooperation with the State and local governments and relayed to the project proponent early in the process. At this time, projects in Sage-grouse Habitat continue to move forward in hopes of receiving a WEM, at exceptional cost to the BLM and all involved cooperators. The Counties agree with the concept of mitigating both direct and indirect impacts through habitat enhancement and restoration, but questions who will determine "no net loss" or "increase of carrying capacity".
	Table 2-5, Row 2	Why does the BLM's Prefered Alternative (5) not include language on adaptive management and thresholds? Is the BLM suggesting that adaptive management not be considered as part of it's preferred alternative?
	Table 2-6	This entire table needs to be replaced and refined for the State of Nevada. The HAF and the State's HAS and CCS are not consistent. This is one area where a State-Specific Draft EIS would be beneficial to all parties.
	Table 2-7	Disturbance Caps are not consistent with the State of Nevada Plan. If the BLM, State and local governments could better coordinate and collaborate on the Mitigation Hierarchy, then habitat caps shouldn't be needed.
2.5.6 - 2.5.13	Table 2-8 through Table 2-15	See cover letter for the County's preferred allocation decisions.

2.5.8	Table 2-10	First, the BLM needs to add "Associated Energy Storage" to this list. Right now storage projects, such as pumped storage are being processed as Major Rights-of-Way and they should be processed the same as wind and solar given their direct linkage, given they have very similar impacts, infrastructure and function. Second, the County recommends that the BLM's Preferred Alternative be consistent with the Allocation Table (see cover letter) where Renewable Energy is excluded from Priority Habitat. There is more than enough area outside of Sage-grouse habit (non-habitat or outside of PMUs) for BLM to meet their renewable energy mandates and goals. The BLM's own analysis in its Administrative Draft Utility-Scale Solar Energy PEIS has shown this. Finally, there needs to be better alignment between this plan and the Solar PEIS. That document establishes a Greater Sage-grouse Exclusion, but defers to this document by saying "GRSG...habitat as identified for exclusion in applicable land use plans." Meaning, if this plan identifies PHMA as "avoidance" and not "exclusion" then that exclusion is removed from the Solar PEIS. This County does NOT support renewable energy development and storage within Priority Habitat, and neither should the BLM.
2.5.9	Table 2-11	The County's Public Land Policy Plan stresses the need for both habitat restoration and predator management, particularly as relates to corvids. The County does not believe that the Draft Plan puts enough emphasis on proactive management of habitat nor predator management. The threat of fire, invasive weed species, conifer infill and expansion and predation are all major threats to Sage-Grouse in this County, yet there is very little in the Draft Plan that emphasizes the need to directly address these threats. The Draft Plan contains a "Preservation Alternative" as defined in its own public presentation, but not an "Collaborative Management Alternative". The County finds this both troubling and ironic. **Recommendation: The County recommends that the BLM designate a "Preferred Alternative" within a Nevada-specific Supplemental Draft EIS that contains additional goals, objectives and management actions to encourage habitat restoration, predator management and collaboration with State and local stakeholders.**
2.5.10	Table 2-12	The Counties support continued livestock grazing in and out of Sage-grouse habitat. The language in Alternatives 4 and 5 is confusing as to whether the BLM is wanting to use HAF or Land Health Standards to potentially "adjust" grazing. The Counties support cooperating between the BLM and grazing permittees to address any Sage-grouse specific concerns, ideally through an Allotment Management Plan. The County is concerned with language regarding removal of range improvements and the potential "taking" of private property, specifically water rights. Any alterations or new improvements need to be coordinated with the BLM and permittee and consistent with State Water Law.
2.5.11	Table 2-13	The Counties support managing HMAs within all Sage-grouse habitat to low AML. The Counties are curious as to why the BLM isn't applying similar HAF and Land Heath Standards to HMAs as they are to Grazing Allotments.
2.5.12	Table 2-14	The County strongly opposes any new ACEC designations. Alternative 3 is completely inconsistent with the State's Sage-grouse Management Plan as well as County Master and Public Land Policy Plans. See comments pertinent to ACEC Appendix, but the proposed ACECs in Nevada don't meet ACEC criteria.
2.5.13	Table 2-15	Alternative 1 is inconsistent with both the DOI's Manual on Adaptive Management and the Nevada Sage-grouse Conservation Plan. Alternative 2 is the only one consistent with the Nevada Sage-grouse Conservation Plan. Any Adaptive Management approach needs to include collaboration and coordination with State and local governments.
2.6.3		The County reitterates its position that the incomplete maps should have never been published, and the only logical path forward to be true to the public process required by NEPA is to issue a Supplemental Draft EIS. Upon publication, a webmapper should be made publically available so that maps can be reviewed at a meaningful scale.
	Table 2-34	The term "cooperation" should be added to MD SSS 5 in addition to "coordination". How does this State-specific Allocation Exception Criteria interrelate to the WEMs listed previously in this ADEIS?
General Comment		The analysis in Chapters 3 and 4 is so broad and general that it is almost useless. This is a problem with trying to assess Sage-grouse at a "rangewide" scale.
3.6.1		The description of the threats to Pinyon jay don't seem to match those presented at the BLM's recent public workshop held in Sparks, NV. The greatest threats presented at the conference were wildfire and disease with minimal impact from "harvest". The County questions how using NatureServe and a Defenders of Wildlife petition is considered unbiased and "best available science" and pinyon-juniper woodland ecology.
3.7.1		The County would like to see a quantitative analysis of how many Sage-grouse PMUs have activated triggers or warnings in HMAs where horses are in excess of high AML.
3.9		Renewable Energy presents a recent and emerging major threat to Greater Sage-Grouse. Renewable Energy production, storage and transmission warrants its own section in this analysis given the above.
3.11		The County questions how an ACEC is any different than designating Priority Habitat. The biggest issue the County sees is that each ACEC would require a subsequent plan, that may differ from the RMP further confusing Sage-grouse regulations. Part of the justification of a "Rangewide" planning effort was to make management more consistent across BLM Districts, so how does designation of ACECs, each with its own unique management plan, provide consistency?
4.2.1 Renewable Energy		It seems that impacts of renewable energy would be more comparible to the Coates findings on Geothermal Development than oil and gas development. This section almost completely disregards the impact of construction of renewable facilities and doesn't even mention energy storage projects.
4.2.1 Livestock Grazing and Wild Horse and Burro Management		Why is it that the section on Livestock Grazing is nearly 2 pages long, while the analysis on Wild Horses and Burros is only 2 paragraphs?

Appendix 1 - General Comment		The scale of these maps is not condusive to a thorough review, nor educated comments. The HMAs are meaningless at this scale. The public needs to be provided with an online Map Viewer so that they can review these maps at a reasonable scale. The map viewer should be linked to the BLM's ePlanning page and include reasonable base maps so reviewers can view the HMAs in relation to key geographic features.
Appendix 1 - General Comment		If the BLM is going to offer various mapping alternatives, then it needs to provide a narrative description somewhere in this appendix that describes how the mapping for each alternative was derived.
Appendix 1 - General Comment		How does the concept of alternative maps work in relation to the fact that every state appears to have multiple maps? The BLM needs to better cooperate and coordinate on a single map for each state that is acceptable to the State. Otherwise, this approach is extremely confusing.
Appendix 1	Map 2.1	A note should be added to this map indicating that the Management Categories (NOT SFAs) in the State of Nevada were adopted by the State in 2015. At this time, this is the only complete map that has actually been approved by the State of Nevada. There also needs to be a disclosure as to the status of the SFAs, and indication that SFAs were NOT approved by the State of Nevada. These disclosures are critical from a transperancy and accuracy standpoint.
Appendix 1	Map 2.2	Something appears to be wrong with this map. First, the BLM needs to describe what this is based on. For NV, it appears that this is the 2015 version of the map, but significant holes appear to have been incorporated in this map when compared to Map 2.1. For instance, the HMAs underlying the SFAs appear to have been turned off. It also appears that HMAs on Forest Service Managed Lands were eliminated.
Appendix 1	Maps 2.3 and 2.6	The ACECs are mapped in a way that it is impossible to get a reasonable geographic handle of where the boundaries are proposed, and this map doesn't match with the descriptions or number systems used in the ACEC Appendix. A more specific full-page map should be provided for each ACEC, including the underlying State-approved HMAs. Boundaries also need to be included in a publically available web viewer.
Appendix 1	Maps 2.8 - 2.61	All of these maps, with the exception of the (a) series, are based on incomplete modeling data in Nevada and as such are extremely misleading. In addition, for sake of transparency and socio-economic analysis quantification, acreage for each managed allocation (exclusion, avoidance, open, etc.) for each use should be listed in the Legend or on a table on the map.
Appendix 1	All Maps	All of these maps lack geographic context and content context. At a minimum, County boundaries should be added to each map to provide some level of geographic context. Additionally, there needs to be some sort of narrative for each map explaining the content and signficance of the content as relates to the DEIS. A simple citation to a study isn't adequate, nor does it provide the public a linkage to the reason it is important to the DEIS analysis.
Appendix 2		This is one area where the document becomes extremely complex and confusing. A state-specific Draft RMPA and Draft EIS would greatly eliminate the confusion created by this Appendix.
Appendix 3 - Nevada and NE CA		*The unpublished results that BLM used for this Draft EIS includes more than six years of additional field data collected since the last published version (Coates et al., 2016) and advances in methodology to produce the HMA model (Milligan et al. 2024 (in review)). It represents an estimate of how HMA model results may change as the model continues to be refined. It is anticipated that the final published model, associated maps, and documentation will be available during the spring of 2024; the BLM intends to incorporate the final published version into the Final EIS. There will likely be differences in the spatial distribution of HMAs between the Draft EIS version and the final published version.* This statement is not an adequate disclosure. The updated maps should have be finished by USGS, reviewed by Cooperating Agencies and adopted by the State of Nevada before they were released by the BLM. Publishing an incomplete model doesn't meet the standard of "best available science" nor the intent of the public NEPA process.
Appendix 3 - Nevada and NE CA		This section needs to add the roll of the State of Nevada and Sagebrush Ecosystem Council in adopting the maps. Also, the section needs to add a description that in 2015 the USGS Model was trimmed to state-defined Population Management Area Boundaries. The reason for this was to eliminate modeled habtiat that was known to be incorrect (non-habitat), or modeled habitat that no longer supports Sage-grouse populations for a variety of reasons. Finally, a disclaimer needs to be added that makes clear that the Nevada maps are based on habitat modeling, and that field verification may be required before a final allocation decision is made (the same thing occurs for required mitigation).
Appendix 4		Given that the WAFWA definitions require a longer period of time for designating leks as "Active" or "Inactive" than previous Nevada planning efforts, how will leks currently considered as "Inactive" be handled going forward? Does this match the definitions used by the USGS in its HMA modeling updates? What happens for leks that have no monitoring data? There are some signficant questions as to how the changing definitions will affect future BLM management that have yet to be answered.
Appendix 5 - General Comment		The County does NOT support designation of ACECs through this process. It appears that the BLM is attempting to prioritize some areas of Sage-grouse Habitat over other by designating ACECs. However , the State of Nevada has already done this by adopting and updating its habitat map and Conservation Plan. The BLM should focus on conserving (including proactive management) priority habitat in Cooperation with the State and local governments in Nevada, and focusing other multiple uses (such as renewable energy development) in areas located outside of Population Management Units, or in areas that have crossed ecological thresholds that won't support Sage-grouse in the future.
5.2		While the proposed ACECs may be relevant because they contain Sage-grouse habitat, the BLM hasn't shown that these areas are any more "relevant" or critial to Sage-grouse Conservation that other areas of mapped Priority Habitat.

5.2		The BLM's analysis has not presented a clear nor compelling case that ACECs are any more important than other mapped PHMA in Nevada. On the contrary, some of the ACECs contain extensive existing authorized uses that make conservation efforts more difficult and result in significant negative impacts on State and local socio-economics.
5.3		It should be noted that no State or local governments nominated ACECs, despite the State's having management authority over Sage-grouse.
5.4.3		It is concerning how top-down this preliminary evaluation was and how reliant it was on desktop analysis with reviews of modeling products. This processes was flawed from the start, sharing ACEC boundaries after the fact isn't "cooperation" in any way.
Appendix 7		Is this framework consistent with the monitoring collected by the State of Nevada through its CCS Process?
Appendix 8 - General Comment		The County noticed inconsistencies with the habitat objectives for each state. Some states like WY only have seasonal habitats (breeding, late brood rearing, and winter). Nevada also has general and riparian. The County requests the removal of the general and riparian to be consistent across the range. The County argues that these requirements are filled by seasonal habitats, and that evauluation on condition through monitoring for annual use, land health evaulations, and SSS that the additional requirements are not necessary and do not provide any additional benefit for grazing management, and does not meet the goals of having consistency across state managment.
App 8	8.2.4	Under the column Perennial grass height, for Nesting habitat, please add language about refering to the state and site's specific ESDs to the table? "Reference state as determined by current ecological site potential in consideration of annual variability?"
App 8	8.2.4	For Note 6, please change "Ecological Site potential" to "Current ecological site potential" to reflect that conditions may have changed, this could be due to many environmental factors.
App 8	8.2.4	Move all foot notes to top of each of the seasonal habitats as current ecological site potntial should be done first before moving forward with evaluation.
Appendix 9 - General Comment		The document would have been easier to read had these figures been incorporated into the text rather than buried in an Appendix. Most figures for Nevada will need to be updated given the map changes.
App 9	Fig. 3.1	This figure shows, more clearly than anything, how wildfire is by far the most impactful influence on Sage-grouse habitat. By conducting a rangewide analysis the County is concerned that a disproportionate focus has been on anthropogenic disturbances at the expense of focusing on Wildfire Prevention, Management and Restoration.
Appendix 10 - General Comment		These assumptions should have been included in Chapter 3, rather than being buried in Appendix 10.
App 10	10.4	For Nevada, there is a major missing assumption and that is that Wildfire is the #1 threat to Sage-grouse rather than "…an important functional natural disturnbance…"
App 10	10.8	Why is there no assumption that livestock grazing can be used as a tool to enhance Sage-grouse habitat and reduce fine fuel loading?
App 10	10.9	There is a complete lack of assumptions related to the exploding interest in Renewable Energy development.
App 10	10.11	"Although management actions for most resources and resource uses have rangewide application, ACEC area management prescriptions apply only to those lands within each specific ACEC." Doesn't this defeat the purpose of a "Rangewide" approach?
App 10	10.21	Again, why was this not included in Chapter 3?
Appendix 11 - General Comment		The County questions why this Appendix was included. At minimum, an introductory paragraph should be included as well as a citation as to where the BLM pulled its "preferred habitat" information. The County doesn't understand how the BLM can complete a "Reasonably Foreseeable Development Scenario without listing pending projects and applications. This seems to be a major omission and problem for cumulative effects analysis.
Appendix 12 - General Comment		Why are only 3 land uses (Fluid Minerals, Wind and Solar) analyzed in this appendix?
App 12	Table 41	The RFDS in Nevada are extremely low. There is nearly that much area under solar application in one County in Nevada at present.
Appendix 13 - General Comment		It is impossible to develop and provide a socio-economic analysis at this level. This analysis does not provide the breadth or depth of analysis that is needed for this planning effort.
Appendix 14		It is impossible to develop and provide a cumulative effects analysis at this level. This analysis does not provide the breadth or depth of analysis that is needed for this planning effort. Because the maps provided for the State of Nevada are incomplete, many of the tables are incorrect and will need to be updated.
App 14	Table 14-1	There are projects in this County that are proposed or in active permitting (NEPA) that are not included in this table.
Appendix 15		In process
App 15	15.1.2	Any changes to range improvements need to be thoroughly discussed with the affected permittees. Removal of range improvements without consent of the Permittee is not acceptable to the County. If the range improvement involves water, then any modification must also comply with State Water Law.
App 15	15.1.2	It is concerning that the BLM suggests resting areas with vegetation treatments for an undetermined amount of time. The County would suggest revising to include site specific analysis and monitoring to determine the appropriate rest period after vegetation treatments to reduce the risk of wildfire and spread of invasive annual grasses, and to additionally reduce the impacts felt by permittees by these resting periods. Permittees should be involved throughout the entire process of any management or movement requirements following “recent burns, habitat rehabilitation, or other restoration sites.”

App 15	15.2	It is not acceptable to th County that “Making allotment unavailable to grazing” is included as a potential modification that could be imposed by the BLM if deemed “incompatible” with goals identified in GHMA and PHMA. The County strongly opposes making allotments unavailable to grazing. Did the BLM intend to imply that grazing will be removed in the event of vegetation treatments? Clarity is needed on this topic.
App 15	15.2	The County strongly opposes: “Considering no grazing from May 15 – Sept. 15 in riparian areas and wet meadows.” The County stresses the importance of determining turn in and turn out dates on a site-specific, allotment by allotment basis. Defining exact dates for the entire state is a doomed approach that is not appropriate for these landscapes. BLM personnel should be able to determine the appropriate turn in and turn out dates in coordination with the affected permittee and in consideration of annual conditions, habitat goals, and parameters unique to the needs of that specific site. Any drastic decisions like this made on allotments should be done in close coordination with the affected permittee and with the appropriate mitigation for the loss in forage and water resources.
App 15	15.2	The County strongly opposes: “In riparian areas and wet meadows the allowable percent utilization is 35% woody species, and a minimum stubble height of 4-6 inches (10- 15 cm) for herbaceous riparian vegetation based on site… In mountain big sage habitat, the allowable percent utilization is 40 % herbaceous key species and/or 35 % shrub key species… In Wyoming Basin big sage habitat, the allowable percent utilization is 35% herbaceous key species and/or 35 % shrub key species… In black sage habitat, the allowable percent utilization is 35% herbaceous key species and/or 35 % shrub key species… To the extent that the implementation of these strategies would be in conflict with the terms and conditions of any applicable livestock grazing permit or lease, then the BLM would complete a new decision-making process before implementing the strategies.” This is concerning considering the BLM is woefully behind in its decision-making processes already and it is unclear how exactly this would be in the best interest of either the landscape or the permittee. Percent utilization should be determined by site conditions, time of use, etc. rather than by species dominant habitat parameters. For example, it is a gross misjudgment to say that all Wyoming Basin big sage habitat only has an allowable percent utilization of 35% when some Wyoming Basin big stage stands pose the greatest wildfire risk and should be utilized more than 35% to mitigate that risk. These percentages do nothing to mitigate the major threats to sage grouse identified in the 2019 Nevada Greater Sage-grouse Conservation Plan and only provide a way to pigeonhole the BLM and their flexible management opportunities. Planned grazing systems focused on site specific needs are best used to address any concerns related to season of use, deferment periods, utilization and other habitat needs.
App 15	15.2	The County is strongly opposed to any voluntary grazing relinquishments resulting in the BLM considering “whether to offer the permit for re-authorization to other grazing applicants or if the public lands where that permitted use was authorized shall be used for other resource management objectives.” (Section 2.5.10, Table 2-12, Alt. 4, Management Action RM-7, Page 2-112). The reallocation of a permit for any other “resource management objectives” is not acceptable. If a permit is relinquished, it should be offered to other permittees prior to any changes in authorized use. Furthermore, it is not acceptable for the BLM to consider the “whether the public lands where that permitted use was authorized should remain available for livestock grazing or be used for other resource management objectives, such as reserve common allotments.” Without proper utilization, these allotments will result in increased fire risk due to the amount of decadent forage that would accumulate. Additionally, invasive annual species would have a greater chance to establish with not opportunity for grazing management to combat their spread.
Appendix 18 - General Comment		The lack of adequate socioeconomic analysis from the 2015 and 2019 RMPAs jeopardizes this process and all decisions in the future. Despite the fact that multiple Nevada Counties and others made critical economic impact information available to the BLM through locally sourced data and reports, the prior RMPAs did not quantify the social or economic effects of actions that impact these industries directly or detailed economic and fiscal impacts to counties, among other flaws, failing to rely upon the best available information. This analysis needs to be completed due to its importance. We appreciate the BLM’s partnership with the University of Nevada, Reno, (UNR) the U.S. Forest Service and counties through the Nevada Economic Assessment Project (NEAP) to create socioeconomic baseline data collection for all counties in Nevada and requests that this effort be expedited. However, the Counties were extremely disappointed to see that no NEAP data appears to have been used in the Socioeconomic Analysis or Methodology. This is a major oversight and lack of use of data the BLM helped pay to compile.

To Utah BLM,

I am writing to support Alternative #3 for the next management plan. Alternative #3 has the best outcome for the Greater Sage-grouse, which is an endangered species.

Sincerely,

Shelly Weiss

Ms. Shelly Weiss
2215 Driftwood Ln
Grand Junction, CO 81507

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June 13, 2024

Greater Sage-grouse Land Use Plan Amendments EIS Comments
ATTN: HQ GRSG RMPA
U.S. Bureau of Land Management - Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101

Submitted via Federal eRulemaking Portal
Portal: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning
(Federal Register/Vol.89, No. 52/Friday, March 15, 2024/Notices)

Dear Ms. Pat Deibert:

On behalf of the Campbell County Board of Commissioners (County), please accept this letter as comments for the Bureau of Land Management's (BLM) Greater Sage-grouse (GrSG) Draft Resource Management Plan Amendment (DRMPA) and Draft Environmental Impact Statement (DEIS). The management of GrSG continues to be of great importance to us and working with federal agencies to pursue a balance between Sage-grouse conservation, multiple use of public lands, energy development and the protection of private property is critical to the long-term health of our County and the State of Wyoming.

As a member of the Wyoming County Commissioners Association (WCCA), Campbell County has been actively engaged in the GrSG RMPA process, today and historically during the 2015 and 2019 plan amendments. In addition, we have participated in the Governor's Executive Order process including the development of Wyoming Executive Order 2015-4 and 2017-2, and most recently the updated Executive Order 2019-3. The County has demonstrated through numerous efforts that we have a vested interest in proactive management of GrSG to prevent a threatened or endangered listing under the Endangered Species Act (ESA).

In Wyoming, counties serve as a legal arm of the state entrusted with carrying out statutory and regulatory goals at the local level. Counties operate at the forefront to ensure our communities are economically vibrant, safe, and healthy places to live and work. Wyoming counties serve as partners and co-regulators of the 18.4 million acres of BLM surface lands and 42.9 million acres of federal mineral estate that fall within our jurisdictional boundaries and uniquely contain varying percentages of federal, state, and private land, which need thoughtful management. Specifically, Campbell County lands are comprised of approximately 12.5% *federal surface* and an estimated 87.5% *federal minerals.*

Furthermore, as co-regulators, Campbell County has prepared the Campbell County Natural Resource Management Plan dated September 2022[1] (County Plan) to serve as the basis for communicating and coordinating with the federal government and its agencies on land and natural resource management issues. Wyo. Stat. § 18-5-208(b). Communication, coordination, and collaboration with the BLM is vital, especially where significant BLM land and minerals exists, and management decisions can significantly impact the regulatory framework, customs, culture, and socioeconomics of our counties.

As partners, Counties work diligently to support the work of our federal land managers to overcome shared challenges and achieve mutual goals. Our counties actively participate with Wyoming BLM field offices and the Wyoming State BLM office on National Environmental Policy Act (NEPA) projects, trainings and presentations, and special initiatives. This proposed Plan Amendment is no exception, as Wyoming counties participated as cooperating agencies in BLM meetings and provided administrative draft comments, where allowed.

In response to this DEIS, Campbell County submits the following detailed comments for BLM's consideration specific to this plan amendment:

I. General

- State of Wyoming – Campbell County endorses, and incorporates by reference, comments submitted by the State of Wyoming.

- Wyoming County Commissioners Association (WCCA) – Campbell County endorses, and incorporates by reference, comments submitted by WCCA.

II. Support for the Wyoming GrSG Executive Order 2019-3 (EO) and State Alternative

Campbell County has gone on record numerous times, strongly supporting BLM's alignment with the Wyoming EO to the greatest extent possible. Campbell County believes the steps taken by the BLM in the past to align with the EO is critical to successful population and habitat management. Further, coordinating and combining resources between the state, local governments and federal agencies ensures the success of long-term management approaches that benefit the species.

The creation of the Sage-grouse Implementation Team (SGIT), an on-going process occurring between a cross section of stakeholders representing a multi-jurisdictional, cross-governmental and citizen-inclusive collaborative working group, focused on developing a satisfactory management strategy to protect GrSG and its habitat. The regulatory framework ultimately developed by SGIT and incorporated into the Wyoming EO resulted in the support of the United States Fish and Wildlife Service (USFWS) as a regulatory mechanism that would in fact protect long-term viability of Sage-grouse habitat and Sage-grouse populations; thereby, avoiding a listing under the ESA.

Wyoming has worked diligently to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. Many of the issues BLM is now readdressing in this latest series of NEPA analysis includes: Priority Habitat Management Area (PHMA) mapping, habitat objectives, approaches to minimizing surface disturbance in PHMA, effects of livestock grazing, mitigation strategies including compensatory mitigation, mitigation recommendations for fluid mineral development within PHMA and General Habitat Management Area (GHMA), wild horse and burro

[1] Campbell County Natural Resource Management Plan dated September of 2022. 2022 CCNRLUP.pdf

management, adaptive management prescriptions and strategies for short-and-long term monitoring, which are all addressed in depth by the Wyoming EO.

BLM should continue to join Wyoming in supporting this EO and the regulatory framework as being the most effective for protecting the species and its habitat and allowing for a flexible strategy addressing changing conditions in a timely manner.

To this point, the State of Wyoming submitted a proposed State Alternative to be analyzed in this DEIS, which provided consistency with the EO. BLM failed to incorporate that proposed state alternative in the analysis as stating it was submitted to BLM too late in the process to be included as a stand-alone alternative. The County strongly encourages BLM to include or acknowledge the State's Alternative in the Final EIS with a sufficient explanation as to why it was not addressed in the analysis to date.

III. Cooperating Agency Process

The cooperating agency process was not without disagreement or frustration as our opportunity to engage with the federal agency, as outlined by the Counsel of Environmental Quality's (CEQ) NEPA regulations and was written into our MOUs, was ignored by the BLM. When these conflicts arose, Wyoming counties did everything in our power, and in accordance with our MOUs, to raise concerns expeditiously to resolve issues, as expressed in our candid conversations and frank letters.

While the DRMPA expresses numerous successes for cooperation throughout the process, there were certainly places that could have been improved. We also realize that the BLM is generically referred to, however, it must be clarified that this process was not run by the Wyoming state office but rather BLM Headquarters. This enlarged scale may be partly to blame for process failures during the cooperating agency process.

Unfortunately, Wyoming counties were powerless in directing how the BLM ran its cooperating agency process and meaningful opportunities for participation in the amendment process were far and few between. In an attempt to remedy this problem, Wyoming counties verbally requested improvements and sent numerous letters asking the BLM to improve the cooperating agency process and work in good faith with cooperators.

Our first letter in June of 2023 asked the BLM to develop a regular schedule of meetings (previous meetings were sprung on cooperators with minimal notice), to provide documents to review before the meetings, and to have the individuals at the BLM actually in charge of drafting the documents in the meetings. BLM did set up regular meetings and invited members of BLM HQ to participate, but documents were not shared with cooperators in advance of, or after, the meetings.

Our second letter in August of 2023 requested the BLM follow its MOU which detailed how cooperators would be assisting in the determination of the purpose and need, development of the alternatives and management prescriptions, along with an estimation of effects of implementing each alternative. Up to this point, cooperators had only been used as editors of small portions of the management prescription tables (never impact analysis), without having the benefit of previously discussing the management prescriptions in a cooperating agency meeting.

The Western Governors' Association (WGA) wrote a similar letter to the BLM outlining concerns that it had with the mapping process, the lack of inclusion of state plans as separate alternatives, and inconsistent information shared to members of its taskforce. This letter prompted the BLM to engage the WGA Taskforce

in cooperating agency meetings. While a positive development for Taskforce members, counties serving as cooperators were not invited. Additionally, it became clear that the BLM was treating the Taskforce differently as it began to share many of the documents requested by counties with the Taskforce, albeit with a disclaimer "that these documents not be shared beyond the SG Task Force."

Our third letter in December of 2023 expressed our exasperation of being given an administrative draft, most of which we had never seen or discussed, to review over the Christmas Holiday. This was the first time that any information concerning the environmental or socio-economic impacts from the range of alternatives was provided to cooperators. Unfortunately, the BLM administrative draft was largely incomplete, inconsistent, and had several sections that were simply incorrect. Specifically, it lacked impact analysis for an entire alternative, it presented erroneous acreage figures and tables for Wyoming, and was woefully inaccurate in its description of socioeconomic impacts from fluid mineral leasing and development.

The BLM acknowledged these errors and promised Wyoming cooperating counties a second review of an updated draft of the socioeconomic sections before the release of the public draft. The BLM failed to uphold this promise and cooperators were never shown updated socioeconomic information before the draft went public.

IV. Consistency with Campbell County Natural Resource Management Plan

The Federal Land Policy and Management Act (FLPMA), which governs the BLM, provides detailed requirements for "coordination" and "consistency" with local government land use plans. FLPMA states:

> To the extent practical, the BLM must stay apprised of local land use plans. The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration. To the extent practical, the BLM must assist in resolving inconsistencies between local and BLM land use plans. The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. 43 U.S.C. § 1712(c)(9).

There is no indication in the DEIS that BLM was apprised of local land use plans or assured that those plans were given consideration as required by FLMPA. Nowhere in the DRMPA does the BLM even quantify the local plans within the amendment area, not to mention, assure those plans are given consideration. At a minimum, the BLM should include a list of the local land use plans that are within the amendment boundary. For further assistance, Campbell County has attached its Campbell County Natural Resource Management Plan, dated September of 2022, in its entirety for your consideration.

FLPMA also requires that within the environmental consequences section of an EIS, the BLM include a discussion of all "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(a)(5). Further, where any inconsistency exists, the BLM is required to provide a statement describing "the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d). An RMP may be inconsistent with local plans only where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and regulations applicable to public lands. *Id.*; 43 C.F.R. § 1610.3-2(a).

There is no discussion of possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. Not only does this discussion concern local land use plans, but the BLM must also discuss the conflicts with its own mandates

and laws. Specifically, it should discuss the obvious conflicts present in Alternative 3 with its multiple use and sustained yield mandate.
The BLM seems to suggest it does not need to do additional consistency review when it states on page ES-12: "Some counties identified their preference for management actions from one alternative or another. It is important to note that these preferences did not specifically cite state or county plan, program, or policy language."

This statement is false and should be removed from the DRMPA. Counties and the State of Wyoming both provided verbal and written comments and identified preferences of management actions based on the State's EO and county plans, programs, and policies. To the extent that additional citation or specificity was desired, the BLM should have asked for it and provided an opportunity for cooperators to provide it.

The DEIS rightfully acknowledges on page 1-12 that "BLM RMPs be consistent with officially approved or adopted resource-related plans of other Federal, State, local, and Tribal governments and policies and programs contained therein, to the extent that they are consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands." However, the DEIS does not address inconsistencies with local plans but instead, claims that the BLM will identify inconsistencies in the Final EIS after receiving comments from state and local government agencies.

Campbell County believes that the BLM's approach of waiting until the final stage to address inconsistencies in the EIS is flawed. This delay prevents state and local government agencies from providing input during the drafting phase, which could have led to substantive comments that might alter the project's components and subsequent analyses. A federal agency should not address consistency solely by responding to concerns raised through comments. Instead, the BLM should have taken an active approach in identifying inconsistencies and addressing them in the DEIS. It is clear that the process by which BLM included a thorough consistency review of the Campbell County local natural resource plan fell far short of adequate and examples of specific inconsistencies will be detailed in this letter below.

IV. Disturbance Caps

The County recognizes the importance and necessity of establishing appropriate disturbance caps to ensure that disturbance to an area does not exceed tolerance levels of the GrSG. The Wyoming State Legislature, federal, state and local agencies, industries, conservation organizations, and landowners have dedicated significant time and resources to conserve GrSG populations in the State. We have shown the capacity and authority to protect and manage the species and its habitats on all lands by establishing oversight mechanisms and implementing protection measures, including developing a disturbance cap using the Density Disturbance Calculation Tool (DDCT). The DDCT establishes a disturbance cap of 5% for suitable GrSG habitat per an average of 640 acres over the entire DDCT assessment area.

To align with the State's EO for GrSG management strategies and to facilitate prompt calculations of disturbance areas, the County suggests that Wyoming be exempt from the 3% HAF fine scale disturbance cap, regardless of the chosen alternative under the EIS. While the BLM would still be able to gather and quantify whatever disturbance data it chooses, the 3% HAF fine scale disturbance cap should not be another disturbance calculator for permit authorization.

Currently, the disturbance levels in Wyoming, including those from fire and agriculture, are well below the 3% cap, making the requirement to meet this cap largely redundant and an inefficient use of time. Moreover,

since the 3% HAF fine scale disturbance cap overlooks disturbances from fire and agriculture, which the DDCT includes, utilizing the DDCT for calculating the disturbance cap offers a more inclusive and simpler approach. As stated earlier, the County supports the Wyoming EO including the utilization of the 5% surface disturbance cap along with the DDCT process, which has proven to be a sufficient management tool of surface disturbing activity within PHMA (core) habitat.

Additionally, the introduction of two disturbance caps could eventually lead to scenarios where one cap is met but the other is exceeded. The DEIS lacks clarity on how the BLM would manage such situations, potentially opening the door to disputes and outside legal challenges. Campbell County is concerned that any perceived discrepancy between the two disturbance calculations could fuel litigation from parties with the intent on halting the permit process. Clarity is key.

If the BLM proceeds with dual disturbance caps, the County would expect the agency to honor its verbal commitment made at the SGIT public meeting on May 29th, 2024, to engage with the State of Wyoming when discrepancies between disturbance caps arise.

Ultimately, by adhering to the established DDCT 5% disturbance cap, the BLM would not only effectively safeguard the habitat of the GrSG from excessive disturbance but also circumvent unnecessary project delays that could stem from additional coordination and potential litigation.

V. Grazing Management Objectives

Agriculture and livestock production in the County is necessary for the economy, its tax base, and the livelihood of the ranching/farming businesses and related industries. It is also vital to the well-being and continued health of natural resources on federal, state, and private lands. The range production of livestock and livestock grazing are management tools that are used to maintain and enhance the rangeland resource, which benefits watersheds, wildlife, water quality, and recreation, as well as providing needed forage for sustaining livestock production and wildlife habitat. Livestock grazing has been a major industry in Campbell County since early settlement and continues to be a vital part of the custom and culture of the County as well as an economic driver.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 121-122 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

4.3.3 Objectives

- Use relevant scientific data and rangeland monitoring data to support any modification of AUMs on state and federal lands.
- Consult and consider the input of permittees/lessees on any proposed changes of use to permits/leases.
- Whereas the BLM Buffalo Field Office has determined livestock grazing to be an acceptable use on 99% of the BLM-administered lands within the Buffalo planning area8, and completed an evaluation to determine 9,992 acres where grazing is incompatible with other resource uses9 State and federal agencies shall not permit the relinquishment, transfer, or retirement of livestock grazing AUMs in favor of conservation, wildlife, or other uses.

- State and federal agencies shall not impede the control of noxious weeds and pests in order to maintain the long-term economic productivity of the rangeland for livestock and wildlife grazing.

In addition, Campbell County encourages BLM to be consistent with the BLM Land Health Standards LHS) and specifically Standard 4 which addresses special status species management (SSS). Furthermore, the management prescriptions pertaining to livestock grazing identified in Chapter 2 (page 2-104, Table 2-12) of the DEIS should be made consistent in Chapter 4 and throughout the entirety of the document.

Specific to Adaptive Management (AM) and grazing in Alternatives 3-6, BLM has removed livestock grazing from the narrative and embedded it in the alternatives table in Chapter 2. The language in the alternatives table for AM is not consistent with current BLM rules and regulations, nor is it consistent with the Alternatives for Livestock Grazing in Chapter 2.

BLM should allow for grazing to be included in the AM process and be consistent with existing alternative language. BLM uses the terms "causal" and "contributing factors" incorrectly. Livestock grazing must be identified as a significant causal factor for LHS SSS before any modifications occur to a livestock grazing permits or leases. The County requests that the following language be considered in the alternatives: Specific to GrSG habitat, manage livestock grazing in a manner that 1) meets or makes progress toward meeting the Land Health Standard for special status species, and applies the guideline that addresses "restoring, maintaining, or enhancing habitats of...special status species to promote their conservation." (43 CFR Part 4180.2(e)(9))

Moreover, under Alternative 3, BLM analyzed for a "no grazing" alternative for all states stating "...Because PHMA would be unavailable for livestock grazing, no overarching livestock grazing objective would be needed." This alternative is economically and technically unfeasible to implement as it is in violation of the Taylor Grazing Act. The most appropriate action, as identified by the CEQ NEPA Regulations, would have been for BLM to consider it and eliminate it from further analysis as it does not meet the standard of alternatives that should be analyzed as "technically or economically" feasible. The County is strongly opposed to a "no grazing alternative" in any form.

Regarding fencing, the County generally supports wildlife friendly fencing; however, BLM must coordinate with the applicable grazing lessees should the removal of fencing be considered as those decisions could impact grazing allotments and management of the resource. Finally, any changes in grazing management should consider effects to the adjoining private or state lands as this could impact grazing management practices.

As demonstrated, agriculture production and livestock grazing are significant for the Counties. Not only do they provide an important tax base, the industry is a historical part of the local custom and culture. In the preferred alternative, the County supports the maximum amount of animal unit months (AUMs) being available for livestock grazing on BLM lands in PHMA and GHMA.

VI. Mitigation

Wyoming remains committed to working with its federal partners to develop a mitigation strategy that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. While BLM must adhere to its mitigation hierarchy (avoid, minimize, rectify, reduce, compensate), the County encourages the federal agency to work with the State of Wyoming by following the well-founded

principles in the EO regarding adaptive management and the mitigation framework which includes steps for requiring compensatory mitigation. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner and provides regulatory certainty for all parties involved.

VII. Private Property Rights

As stated earlier, Campbell County is rich in federal resources as our lands are comprised of approximately 12.5% *federal surface* and an estimated 87.5% *federal minerals*. Farming, ranching, energy development, tourism and recreation contribute heavily to the heritage of the County. Rangeland used by livestock and agricultural producers continues to be the dominant land use and federal agencies should consider the effects their decisions will have on neighboring private lands.

Furthermore, access to, or restrictions from, crossing federal, state, or county managed lands should not entail encumbrances or constraints on private property. Private property rights are the cornerstone of our County and must be protected to ensure that our continued customs and culture remain intact. When an agency decision or proposed action will have a negative impact to the current use of neighboring private lands, that federal undertaking may not be supported by the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 15-16, 73-74 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

2.3 Objectives

- Strive for no net loss of private lands in Campbell County. Net loss shall be measured in acreage and fair market value.
- Seek to ensure that private property rights are protected in state and federal planning processes.

3.9.3 Objectives

- State and federal agencies shall be encouraged to provide financial and material support for private landowners in resource enhancement to provide enhanced habitat for wildlife.

4.4.6 Objectives

- Recognize and venerate private property rights in mineral resource development;
- Recognize and venerate the right of private property owners to determine standards and practices on their private land.

4.7.6 Objectives

- Do not encumber or restrict private property rights or privileges with access to or across state or federal lands.

Campbell County is particularly concerned about the failure of the DRMPA from analyzing the effects on neighboring state and private lands in the analysis area. Whether described as adjacency effects or cumulative

effects, in a state where the BLM manages approximately 18 million surface acres and 41 million subsurface acers (66% of the state), there are substantial impacts to private and state lands across the decision area.

Management and ownership patterns lack uniformity creating a complex and interwoven mix of state, private, and federal minerals that are often "coproduced." The scale of coproduction can vary in degree and can be described in several ways. First, oil and gas can be coproduced by an individual wellbore that crosses through and produces the varying mineral estates. Second, oil and gas can be coproduced inside a drilling and spacing unit, where specific production is pro-rated to the percent of ownership in the drilling area. Finally, oil and gas can be coproduced across the entirety of a company's development play.

Oil and gas companies, like any other enterprise, must take into account risk/reward, scalability for cost saving, future development potential, infrastructure needs, and regulatory regimes. Operators prioritize areas for development where they can maximize returns and reduce risks. In the current phase of development in Wyoming's Powder River Basin, operators have large swaths of development to minimize risks, provide operational flexibility, and cost share infrastructure.

Even where a wellbore doesn't penetrate federal minerals in a particular drilling and spacing unit, gathering lines, pipelines, transmission lines, and roads to get product to the market inevitably run into federal management at some juncture. Therefore, ROW and surface occupancy restrictions have significant implications for private and state lands and minerals.

This analysis needs to be included in DRMPA. The BLM should acknowledge and analyze the cumulative effects of restrictions on the socioeconomics of our communities. The BLM's socioeconomic analysis should describe the human interests and values shaping public lands management, identifying effects of proposed actions on communities and economies, and promote the economic and social sustainability of communities near public lands.

VIII. Adaptive Management

Wyoming has worked diligently with its federal partners (BLM and USFWS) to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner.
Under Wyoming Statute § 23-1-103, "...all wildlife in Wyoming is the property of the state..." and the Wyoming Game and Fish Department (WGFD) has the legal responsibility for carrying out the purposes of this act. Using the best available science in the Adaptive Management process is necessary to continue long-term healthy populations of GrSG. Recognizing the WGFDs expertise, the State's Adaptive Management strategy places the responsibility of conducting annual population data squarely with the state agency. It is imperative that BLM recognize the WGFDs authority and expertise in this process. The County implores BLM to defer to the WGFD regarding any data collection or management decisions that pertain to the population trend analysis of GrSG within the boundaries of Wyoming.

IX. Wild Horses

In 1971, Congress enacted the Wild Free-Roaming Horse and Burro Act (Public Law 92-195), which guides the management, protection and control of wild horses and burros on federal lands managed by the USFS and BLM. Herd Management Areas (HMAs) were established in ten Western states based on the existing

populations during the passing of the Act in 1971. This Act also mandates that wild/feral horses and burros are managed in a thriving ecological balance with the land and as part of the natural landscape (USFS 2021b). To ensure wild/feral horse and burro populations remain in good condition and that federal lands are protected from degradation, the growth of wild/feral horse and burro herds must be actively managed.

Population control is necessary to protect fragile ecosystems, balance shared use of resources by wildlife, and maintain herd health and protect herds from starvation. Campbell County encourages aggressive wild horse and burro management that will not adversely impact rangeland resources, livestock or grazing, wildlife habitat or resources, soil resources, or other varied land uses.

The only viable alternative analyzed that appropriately addresses actual management of wild horse and burros is Alternative 3 (page 2-114, Table 2-13). Managing for "zero" Appropriate Management Levels (AMLs) within HMAs that overlap with PHMA and removing wild horses in those areas is the proper land management prescription and is the only realistic method for meeting AML at the implementation level. For the benefit of the GrSG, all available agency tools must be used to support herd management plans that prevent habitat degradation and native wildlife displacement, including the removal of all wild horses and burros from PHMA.

The State of Wyoming submitted alternative language for wild horses that based any removal of HMAs on whether wild horses were the causal factor of range degradation for a certain period of years. While substantial evidence already exists, that wild horses cause significant range damage and negatively impact GrSG, Wyoming's recommended approach would have been more economically, politically, and scientifically defensible. Unfortunately, this alternative was not properly considered in any of the other alternatives.

X. Lack of Need for ACECs

The WCCA conducted a consistency review on a statewide basis of the DEIS alternatives in relation to ACECs and county natural resource plans, which is summarized in the attached table. In addition to the consistency table, the text below details the concerns regarding the BLM's inadequate and untimely consistency review and the unnecessary designation of ACECs in areas with existing and adequate PHMA designations to manage for and protect GrSG.

An ACEC is defined as "areas within the public lands where special management attention is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a).

A potential ACEC must satisfy a three-part test before it may be designated. First, it must have "relevance," meaning it possesses "a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard." 43 C.F.R. § 1610.7-2(a)(l). Second, it must also have "importance," meaning the relevant values identified in the first step must have "substantial significance and values." 43 C.F.R. § 1610.7-2(a)(2); see also BLM Manual 1613, Section 1 l.B. For the relevance values to meet the "importance" threshold, the area must have "more than locally significant qualities ... compared to any similar resource," have qualities that make it fragile, rare, or irreplaceable, or been recognized as warranting protection to satisfy national priority concerns. BLM Manual 1613, Section 11.B.1. Third, the nominated area must require "special management" "to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish, wildlife, and plant resources, or other natural system or processes." 43 U.S.C. § 1702(a).

Certainly, ACECs can play a role in conservation and special management of historic, cultural, scenic, fish and wildlife resources. However, the BLM has not demonstrated how the addition of the proposed ACECs under Alternative 3 of the DEIS will improve Greater Sage-grouse populations and habitat more effectively than Priority Habitat Management Areas (PHMAs). Under Alternative 3, the DEIS states that the ACECs would be managed similarly to PHMAs, without additional management prescriptions. Campbell County strongly feels that the designation of ACECs under Alternative 3 are unnecessary given that they will be managed exactly the same as PHMAs. The BLM fails to consider how GrSG populations and habitat are already protected under existing management actions and will be further protected by the proposed management actions under Alternatives 3 of the DEIS. A significant example of this failure is the BLM's attempt to layer ACEC designations on top of existing ACECs like in Fremont and Sublette Counties.

Furthermore, ACEC designations could allow for excessive regulatory authority in the future for areas that are otherwise considered appropriate for PHMA management. Unnecessary designation opens the door for further impediments to multiple use practices.

Campbell County strongly opposes the designation of any Sage-grouse ACECs in Wyoming. As discussed earlier in these comments, we have worked diligently as a state to develop a framework that effectively manages for GrSG populations and its habitat and no new ACEC designations are warranted nor will they provide any additional protections not already in place.

XI. Fluid Mineral Development and Leasing Objective

Likely the most substantial direct impact to local government revenue in Wyoming is the management prescription for oil and gas development. Consequently, it is vital to correctly capture existing development and the Reasonably Foreseeable Development Scenario (RFDs). The RFD is even more important to get correct when it is comparing the potential impacts from wildly inconsistent alternatives. If poor or incorrect data is utilized to develop the RFD, then the RFD and resulting socioeconomic analysis will be flawed.

Certain portions of the BLM's description and analysis of existing oil and gas could be improved. For example, on 12-38 the BLM reports 9,127 wells have been "drilled" in Wyoming between 2013 and 2023. However, this figure includes workovers and wells that were never completed, which may capture wells that were never actually "drilled." The section properly includes data from the Wyoming Oil and Gas Conservation Commission, which reflects a total of 6,455 unique well spuds in Wyoming between 2013 and 2023. However, the fact that the state's number is 30% less than the BLM's number reflects a poor attempt to gather and clean-up the data for analysis.

On page 12-39, the DRMPA states that 24% of the HMAs in Wyoming are under an existing authorized lease. Additional data that should have been reflected in the DRMPA and clarified in this section is the number of leased acreage currently under litigation in Wyoming. Without including litigated leases in Table 35, it is misleading to members of the public that equate "authorized" as available for development.

In order to understand whether the RFD is truly reasonable there should be a greater description of what was utilized for inputs and variables. Table 35 in Appendix 12 would benefit from a better description of the "source" of the data provided in the table. In addition, there needs to be additional description of the table to help clarify whether these projected wells are federal surface and minerals, private/state surface and federal minerals, or mixed minerals and surface, etc.

The "Projected Production by Alternative in the Decision Area" needs to be amended to more accurately reflect the decline curves associated with modern horizontal development in Wyoming. Without any written description or justification, the projection utilizes a record production year in Wyoming as its basis for production over the next 20 years. In other words, the current projections do not consider decline curves of existing and new wells but keep historic production levels constant. However, it must be noted that the only way to maintain that statewide production level as production declines from existing wells is to drill and produce new wells.
The problem with maintaining existing production as a constant in the RFD is that it artificially reduces the negative economic impacts associated with alternatives 3 and 4 reduced projected well development. This is because the weight given to new wells is significantly reduced by the artificial base production of the existing wells.

Under Alternative 3 only 4,284 wells are expected to be drilled in the next 20 years. This is compared to Alternative 1 that projects 14,450 wells drilled in the same period of time. Although alternative 3 projects over 10,000 less wells are drilled in 20 years it only reduces the production of oil by roughly 224,000,000 barrels and gas by 4,600,000,000 mcf of gas.

Taxes derived from oil and gas development in Wyoming constitutes a significant portion of state and county revenue used to pay for public education and essential services, including roads, fire protection, emergency medical services, courthouses, libraries, landfills, hospitals, law enforcement, airports, recreation, and senior citizen centers. To further illustrate its importance, the assessed valuation in Campbell County alone for oil and gas in Fiscal Year 2022 is approximately $1.6 billion.

Oil and gas companies operating in Wyoming are assessed property (ad valorem) taxes by counties and severance taxes by the state. Although they are called "taxes" both are more akin to a royalty because production is taxed regardless of whether an operator makes a profit. Property taxes on oil and gas vary by county and range from 6-7.3% calculated by the gross revenue of the previous year's production and the value of tangible equipment and improvements. Severance taxes are calculated at 6% of gross revenue in the same manner as royalty taxes (gross revenue minus transportation and gas processing cost). Federal Royalties are also deducted from the gross revenue for the purpose of calculating severance taxes.

Property taxes on oil and gas account for over 40% of the total property taxes levied by counties in Wyoming. In 2020, the property taxes collected by counties exceeded $600 million. Additionally, severance taxes collected by the state in 2022 topped $275 million. When adding in federal lease revenues, federal and state royalties, sale and use taxes, and conservation taxes, the industry contributed $1.23 billion in taxes to state and local governments.

Furthermore, ad Valorum taxes associated with oil and gas production generated an average of over $12,000,000 a year for Campbell County the last 5 years. This represents over 25% of all property tax paid in the County. A decrease in assessed valuation will affect all County operations including road and bridge construction and maintenance, investment in IT technology and cyber security, economic diversification investment (water, sewer, and streets), fire equipment and personal, and daily operations.

As noted on the Petroleum Association of Wyoming (PAW) website, Wyoming ranked 8th in production of both crude oil and natural gas in 2022 nationally. Further, Wyoming ranked the 2nd largest producer of both oil and natural gas on federal lands, making the state disproportionally affected by national policy changes.

According to a 2023 study released by the American Petroleum Institute, in 2021 the oil and natural gas had the following impacts on the Wyoming economy: 58,780 total jobs and $5.7 Billion in labor income.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 132-133 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

4.4.6 Objectives

- State and federal agencies shall:
  - not limit or infringe upon the ability of private mineral owners to access, extract and transport their mineral resource, including in areas determined set aside for no mineral leasing on federal lands, if that determination takes place after leasing has already occurred or adequate compensation shall be provided;
  - provide clearly defined mapping and data to warrant any kind of cultural, paleo, plant or wildlife inventory on private lands
  - Base wildlife buffers, occupancy stipulations, and restrictions on peer reviewed and approved credible scientific data and share in writing with any affected private property owner upon request.
  - Make available voluntary, compensatory mitigation measures, both on and off-site,
  - to mineral resource development companies conducting activities within wildlife buffers, occupancy stipulations, and restrictions.
  - Resolve conflicts between competing mineral resource industries in an effort to maximize production and sustained economic returns.
- Coordinate, cooperate, and consult with local governments and potentially affected stakeholders, including private landowners, on proposed and pending federal actions regarding mineral development;
- Except for Congressional withdrawals, federally managed lands shall remain open and available for mineral resource exploration, development and production, unless
- administrative withdrawal or other action is necessary to protect the national security and withdrawal procedures are fully followed.

Funding derived from mineral development constitutes a significant portion of State and County revenue used to pay for essential services, including roads, fire protection, courthouses and judicial systems, libraries, landfills, hospitals, law enforcement, airports, recreation, public health, and senior citizen centers. Any curtailment of leasing and development activity significantly impacts the socio-economics of the communities and eliminates a critical funding stream for not just our County but all counties, the State of Wyoming and its residents.

Our ability to fund organizations would be negatively affected, which includes but is not limited to, the following: WY Child and Family Development, Children's Advocacy Project (forensic interviewing of sexually assaulted and abused children), Human Resource Council, 'Youth Development Services (Youth Crisis and Intervention Center)', Humane Society, Boys and Girls Clubs, County Fair Boards, Hope Center (Domestic Violence and Sexual Assault Survivors Crisis Center and Shelter), local Libraries, Behavioral and Mental Health Crisis and Intervention Centers, Economic Development organizations and various youth and community recreation organizations. Without County support these organizations will offer fewer public services and could fail and there would be insufficient funds to provide basic services at a level needed for the protection of the county resident's health, safety, and security.

It cannot be stated enough the importance that the oil and gas industry plays in Wyoming. BLM must do all it can to find a balance between GrSG species and habitat protection with continued mineral leasing and development. This balance must be made in consideration of the interwoven land ownership patterns across Wyoming.

XII. Transportation and Transmission Objectives

Public access to routes of travel is essential to the County's transportation and public access systems and to the economic, social, political well-being, customs and culture of the communities. Many private landowners need rights-of-way across state and federal lands to access their property, to use their water rights, and to exercise their grazing rights. Rights-of-ways (ROW) and corridors provide for the development of certain types of infrastructure or facilities that are in the public interest on federal lands for a specified period of time.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Page 155 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

4.7.6 Objectives

- Notify, within a reasonable time period, all potentially affected land holders regarding proposed new transportation routes, re-routing, or closure of transportation routes affecting their property by entity proposing such routes.
- Do not encumber or restrict private property rights or privileges with access to or across state or federal lands.

Regarding approved access for transportation or transmission within PHMA, the County will support the Wyoming EO and the surface disturbance DDCT process for determining access. However, we strongly encourage BLM and the state to coordinate and consult with the affected County regarding any planning process or activity that restricts, eliminates, increases, or decreases access to federal or state lands and allow the County the opportunity to resolve any potential conflicts with the County's objectives, principles, and policies, prior to acting.

XIII. Socioeconomics

Economic impacts do matter. Access to federally administered lands and resources are critical to ensure the socioeconomic well-being, custom, culture and stability of our communities. In Campbell County, lands under federal or state control and decisions made for public land management can directly impact the service and non-service industries, public accessibility, and the demographics of an area. Effective coordination and consultation between the County, federal and state agencies is critical to ensuring that land management agencies thoroughly consider the effects that proposed actions have on custom, culture, and economic stability; conservation and use of the environment and natural resources in the County along with multiple use. Counties receive revenue from federal lands in many ways including mineral leasing and development, agriculture, recreation, travel and tourism, etc. Any curtailment of access to public lands will directly impact the socioeconomics of the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 107-108 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

4.1.9 Objectives

- State and federal agencies shall:
    - Notify, at the earliest point, Campbell County of any proposed action, change of existing activities, newly permitted activities, or changes in regulations that may affect the economic base of the county.
    - Include Campbell County in the review of any proposed developments and in any decision-making processes.
    - Collaborate and consult with county agencies and the public to determine the full scope of potential social and economic effects of activities occurring on public lands and Campbell County should be notified of such discussions.
    - Collaborate with county agencies to develop a meaningful and relevant mitigation plan to address any direct or indirect negative social or economic effects resulting from a state or federal agency permitted activity or planning action.
    - Enforce the economic mitigations set forth in approved mitigation plans.
- Consider opportunities for economic development based on project merits and a comprehensive evaluation of the impacts to local or regional economic conditions;
- Perform a socioeconomic impact analysis for each land management activity or decision related to state and federal properties; these analyses shall be conducted by experts familiar with the area's unique history, culture, economy and resources.
- Include in socioeconomic impact analyses a description of existing social, demographic, and economic conditions; the analytical methodologies; and the impacts to a comprehensive set of topics, including, but not limited to: population, employment, income levels, industry activity, housing, community services, utility services, schools, fiscal impacts to the county and local jurisdictions, public revenues, public expenditures, transportation, social conditions, and quality of life.
- Address in socioeconomic impact analyses the impacts of all phases of development or other activities, including construction and long-term operations, and all impacts of changes in regulations or other long-term planning strategies.
- Make socioeconomic impact analyses that are developed by state and federal agencies publicly available to all county officials, residents, or other citizens.
- Revise and modify socioeconomic mitigation plans over time in response to actual, on the ground conditions. Monitoring socioeconomic impacts and adapting the response to those impacts will be needed in order to properly mitigate certain actions.

The County cannot state clearly enough the importance of our ability to access federal lands to drive vibrant economic communities. BLM significantly undervalued the mineral contributions to the counties and state in the socioeconomic section. BLM must include a robust socioeconomic analysis clearly demonstrating the differences between management prescriptions in the Alternatives, which includes impacts to the tax base (royalties, rents or bonus bids, severance taxes, ad valorem taxes, sales and use tax employment income, and direct and indirect employment.) The County can assist in providing the most up-to-date information available for BLMs analysis.

In conclusion, Campbell County is committed to continuing our engagement as a cooperating agency along with the State of Wyoming, its state agencies and BLM to work through these important issues. We encourage BLM to align with the most recent Wyoming EO, include acknowledgement and analysis of the Wyoming State Alternative and to develop a preferred alternative that takes into consideration our comments submitted herein.

Should you have questions or require additional information, do not hesitate to contact Commissioner Butch Knutson at 307-682-7283 (butch.knutson@campbellcountywy.gov) or our natural resource policy advisor Dru Palmer at 307-388-2709 (dru@wyoming.com).

Sincerely,

Del Shelstad, Chairman
Board of Campbell County Commissioners

CC: The Honorable Governor Mark Gordon
The Honorable United States Senator John Barrasso
The Honorable United States Senator Cynthia Lummis
The Honorable United States Congressman Harriet Hageman

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BOARD OF COMMISSIONERS
Del Shelstad, Chairman
Jim Ford
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Kelley McCreery
Bob Jordan

June 13, 2024

Greater Sage-grouse Land Use Plan Amendments EIS Comments
ATTN: HQ GRSG RMPA
U.S. Bureau of Land Management - Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101

Submitted via Federal eRulemaking Portal
Portal: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning
(Federal Register/Vol.89, No. 52/Friday, March 15, 2024/Notices)

Dear Ms. Pat Deibert:

On behalf of the Campbell County Board of Commissioners (County), please accept this letter as comments for the Bureau of Land Management's (BLM) Greater Sage-grouse (GrSG) Draft Resource Management Plan Amendment (DRMPA) and Draft Environmental Impact Statement (DEIS). The management of GrSG continues to be of great importance to us and working with federal agencies to pursue a balance between Sage-grouse conservation, multiple use of public lands, energy development and the protection of private property is critical to the long-term health of our County and the State of Wyoming.

As a member of the Wyoming County Commissioners Association (WCCA), Campbell County has been actively engaged in the GrSG RMPA process, today and historically during the 2015 and 2019 plan amendments. In addition, we have participated in the Governor's Executive Order process including the development of Wyoming Executive Order 2015-4 and 2017-2, and most recently the updated Executive Order 2019-3. The County has demonstrated through numerous efforts that we have a vested interest in proactive management of GrSG to prevent a threatened or endangered listing under the Endangered Species Act (ESA).

In Wyoming, counties serve as a legal arm of the state entrusted with carrying out statutory and regulatory goals at the local level. Counties operate at the forefront to ensure our communities are economically vibrant, safe, and healthy places to live and work. Wyoming counties serve as partners and co-regulators of the 18.4 million acres of BLM surface lands and 42.9 million acres of federal mineral estate that fall within our jurisdictional boundaries and uniquely contain varying percentages of federal, state, and private land, which need thoughtful management. Specifically, Campbell County lands are comprised of approximately 12.5% *federal surface* and an estimated 87.5% *federal minerals.*

Furthermore, as co-regulators, Campbell County has prepared the Campbell County Natural Resource Management Plan dated September 2022[1] (County Plan) to serve as the basis for communicating and coordinating with the federal government and its agencies on land and natural resource management issues. Wyo. Stat. § 18-5-208(b). Communication, coordination, and collaboration with the BLM is vital, especially where significant BLM land and minerals exists, and management decisions can significantly impact the regulatory framework, customs, culture, and socioeconomics of our counties.

As partners, Counties work diligently to support the work of our federal land managers to overcome shared challenges and achieve mutual goals. Our counties actively participate with Wyoming BLM field offices and the Wyoming State BLM office on National Environmental Policy Act (NEPA) projects, trainings and presentations, and special initiatives. This proposed Plan Amendment is no exception, as Wyoming counties participated as cooperating agencies in BLM meetings and provided administrative draft comments, where allowed.

In response to this DEIS, Campbell County submits the following detailed comments for BLM's consideration specific to this plan amendment:

I. General

- State of Wyoming – Campbell County endorses, and incorporates by reference, comments submitted by the State of Wyoming.

- Wyoming County Commissioners Association (WCCA) – Campbell County endorses, and incorporates by reference, comments submitted by WCCA.

II. Support for the Wyoming GrSG Executive Order 2019-3 (EO) and State Alternative

Campbell County has gone on record numerous times, strongly supporting BLM's alignment with the Wyoming EO to the greatest extent possible. Campbell County believes the steps taken by the BLM in the past to align with the EO is critical to successful population and habitat management. Further, coordinating and combining resources between the state, local governments and federal agencies ensures the success of long-term management approaches that benefit the species.

The creation of the Sage-grouse Implementation Team (SGIT), an on-going process occurring between a cross section of stakeholders representing a multi-jurisdictional, cross-governmental and citizen-inclusive collaborative working group, focused on developing a satisfactory management strategy to protect GrSG and its habitat. The regulatory framework ultimately developed by SGIT and incorporated into the Wyoming EO resulted in the support of the United States Fish and Wildlife Service (USFWS) as a regulatory mechanism that would in fact protect long-term viability of Sage-grouse habitat and Sage-grouse populations; thereby, avoiding a listing under the ESA.

Wyoming has worked diligently to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. Many of the issues BLM is now readdressing in this latest series of NEPA analysis includes: Priority Habitat Management Area (PHMA) mapping, habitat objectives, approaches to minimizing surface disturbance in PHMA, effects of livestock grazing, mitigation strategies including compensatory mitigation, mitigation recommendations for fluid mineral development within PHMA and General Habitat Management Area (GHMA), wild horse and burro

[1] Campbell County Natural Resource Management Plan dated September of 2022. 2022 CCNRLUP.pdf

management, adaptive management prescriptions and strategies for short-and-long term monitoring, which are all addressed in depth by the Wyoming EO.

BLM should continue to join Wyoming in supporting this EO and the regulatory framework as being the most effective for protecting the species and its habitat and allowing for a flexible strategy addressing changing conditions in a timely manner.

To this point, the State of Wyoming submitted a proposed State Alternative to be analyzed in this DEIS, which provided consistency with the EO. BLM failed to incorporate that proposed state alternative in the analysis as stating it was submitted to BLM too late in the process to be included as a stand-alone alternative. The County strongly encourages BLM to include or acknowledge the State's Alternative in the Final EIS with a sufficient explanation as to why it was not addressed in the analysis to date.

III. Cooperating Agency Process

The cooperating agency process was not without disagreement or frustration as our opportunity to engage with the federal agency, as outlined by the Counsel of Environmental Quality's (CEQ) NEPA regulations and was written into our MOUs, was ignored by the BLM. When these conflicts arose, Wyoming counties did everything in our power, and in accordance with our MOUs, to raise concerns expeditiously to resolve issues, as expressed in our candid conversations and frank letters.

While the DRMPA expresses numerous successes for cooperation throughout the process, there were certainly places that could have been improved. We also realize that the BLM is generically referred to, however, it must be clarified that this process was not run by the Wyoming state office but rather BLM Headquarters. This enlarged scale may be partly to blame for process failures during the cooperating agency process.

Unfortunately, Wyoming counties were powerless in directing how the BLM ran its cooperating agency process and meaningful opportunities for participation in the amendment process were far and few between. In an attempt to remedy this problem, Wyoming counties verbally requested improvements and sent numerous letters asking the BLM to improve the cooperating agency process and work in good faith with cooperators.

Our first letter in June of 2023 asked the BLM to develop a regular schedule of meetings (previous meetings were sprung on cooperators with minimal notice), to provide documents to review before the meetings, and to have the individuals at the BLM actually in charge of drafting the documents in the meetings. BLM did set up regular meetings and invited members of BLM HQ to participate, but documents were not shared with cooperators in advance of, or after, the meetings.

Our second letter in August of 2023 requested the BLM follow its MOU which detailed how cooperators would be assisting in the determination of the purpose and need, development of the alternatives and management prescriptions, along with an estimation of effects of implementing each alternative. Up to this point, cooperators had only been used as editors of small portions of the management prescription tables (never impact analysis), without having the benefit of previously discussing the management prescriptions in a cooperating agency meeting.

The Western Governors' Association (WGA) wrote a similar letter to the BLM outlining concerns that it had with the mapping process, the lack of inclusion of state plans as separate alternatives, and inconsistent information shared to members of its taskforce. This letter prompted the BLM to engage the WGA Taskforce

in cooperating agency meetings. While a positive development for Taskforce members, counties serving as cooperators were not invited. Additionally, it became clear that the BLM was treating the Taskforce differently as it began to share many of the documents requested by counties with the Taskforce, albeit with a disclaimer "that these documents not be shared beyond the SG Task Force."

Our third letter in December of 2023 expressed our exasperation of being given an administrative draft, most of which we had never seen or discussed, to review over the Christmas Holiday. This was the first time that any information concerning the environmental or socio-economic impacts from the range of alternatives was provided to cooperators. Unfortunately, the BLM administrative draft was largely incomplete, inconsistent, and had several sections that were simply incorrect. Specifically, it lacked impact analysis for an entire alternative, it presented erroneous acreage figures and tables for Wyoming, and was woefully inaccurate in its description of socioeconomic impacts from fluid mineral leasing and development.

The BLM acknowledged these errors and promised Wyoming cooperating counties a second review of an updated draft of the socioeconomic sections before the release of the public draft. The BLM failed to uphold this promise and cooperators were never shown updated socioeconomic information before the draft went public.

IV. Consistency with Campbell County Natural Resource Management Plan

The Federal Land Policy and Management Act (FLPMA), which governs the BLM, provides detailed requirements for "coordination" and "consistency" with local government land use plans. FLPMA states:

> To the extent practical, the BLM must stay apprised of local land use plans. The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration. To the extent practical, the BLM must assist in resolving inconsistencies between local and BLM land use plans. The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. 43 U.S.C. § 1712(c)(9).

There is no indication in the DEIS that BLM was apprised of local land use plans or assured that those plans were given consideration as required by FLMPA. Nowhere in the DRMPA does the BLM even quantify the local plans within the amendment area, not to mention, assure those plans are given consideration. At a minimum, the BLM should include a list of the local land use plans that are within the amendment boundary. For further assistance, Campbell County has attached its Campbell County Natural Resource Management Plan, dated September of 2022, in its entirety for your consideration.

FLPMA also requires that within the environmental consequences section of an EIS, the BLM include a discussion of all "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(a)(5). Further, where any inconsistency exists, the BLM is required to provide a statement describing "the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d). An RMP may be inconsistent with local plans only where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and regulations applicable to public lands. *Id.*; 43 C.F.R. § 1610.3-2(a).

There is no discussion of possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. Not only does this discussion concern local land use plans, but the BLM must also discuss the conflicts with its own mandates

and laws. Specifically, it should discuss the obvious conflicts present in Alternative 3 with its multiple use and sustained yield mandate.
The BLM seems to suggest it does not need to do additional consistency review when it states on page ES-12: "Some counties identified their preference for management actions from one alternative or another. It is important to note that these preferences did not specifically cite state or county plan, program, or policy language."

This statement is false and should be removed from the DRMPA. Counties and the State of Wyoming both provided verbal and written comments and identified preferences of management actions based on the State's EO and county plans, programs, and policies. To the extent that additional citation or specificity was desired, the BLM should have asked for it and provided an opportunity for cooperators to provide it.

The DEIS rightfully acknowledges on page 1-12 that "BLM RMPs be consistent with officially approved or adopted resource-related plans of other Federal, State, local, and Tribal governments and policies and programs contained therein, to the extent that they are consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands." However, the DEIS does not address inconsistencies with local plans but instead, claims that the BLM will identify inconsistencies in the Final EIS after receiving comments from state and local government agencies.

Campbell County believes that the BLM's approach of waiting until the final stage to address inconsistencies in the EIS is flawed. This delay prevents state and local government agencies from providing input during the drafting phase, which could have led to substantive comments that might alter the project's components and subsequent analyses. A federal agency should not address consistency solely by responding to concerns raised through comments. Instead, the BLM should have taken an active approach in identifying inconsistencies and addressing them in the DEIS. It is clear that the process by which BLM included a thorough consistency review of the Campbell County local natural resource plan fell far short of adequate and examples of specific inconsistencies will be detailed in this letter below.

IV. Disturbance Caps

The County recognizes the importance and necessity of establishing appropriate disturbance caps to ensure that disturbance to an area does not exceed tolerance levels of the GrSG. The Wyoming State Legislature, federal, state and local agencies, industries, conservation organizations, and landowners have dedicated significant time and resources to conserve GrSG populations in the State. We have shown the capacity and authority to protect and manage the species and its habitats on all lands by establishing oversight mechanisms and implementing protection measures, including developing a disturbance cap using the Density Disturbance Calculation Tool (DDCT). The DDCT establishes a disturbance cap of 5% for suitable GrSG habitat per an average of 640 acres over the entire DDCT assessment area.

To align with the State's EO for GrSG management strategies and to facilitate prompt calculations of disturbance areas, the County suggests that Wyoming be exempt from the 3% HAF fine scale disturbance cap, regardless of the chosen alternative under the EIS. While the BLM would still be able to gather and quantify whatever disturbance data it chooses, the 3% HAF fine scale disturbance cap should not be another disturbance calculator for permit authorization.

Currently, the disturbance levels in Wyoming, including those from fire and agriculture, are well below the 3% cap, making the requirement to meet this cap largely redundant and an inefficient use of time. Moreover,

since the 3% HAF fine scale disturbance cap overlooks disturbances from fire and agriculture, which the DDCT includes, utilizing the DDCT for calculating the disturbance cap offers a more inclusive and simpler approach. As stated earlier, the County supports the Wyoming EO including the utilization of the 5% surface disturbance cap along with the DDCT process, which has proven to be a sufficient management tool of surface disturbing activity within PHMA (core) habitat.

Additionally, the introduction of two disturbance caps could eventually lead to scenarios where one cap is met but the other is exceeded. The DEIS lacks clarity on how the BLM would manage such situations, potentially opening the door to disputes and outside legal challenges. Campbell County is concerned that any perceived discrepancy between the two disturbance calculations could fuel litigation from parties with the intent on halting the permit process. Clarity is key.

If the BLM proceeds with dual disturbance caps, the County would expect the agency to honor its verbal commitment made at the SGIT public meeting on May 29th, 2024, to engage with the State of Wyoming when discrepancies between disturbance caps arise.

Ultimately, by adhering to the established DDCT 5% disturbance cap, the BLM would not only effectively safeguard the habitat of the GrSG from excessive disturbance but also circumvent unnecessary project delays that could stem from additional coordination and potential litigation.

V. Grazing Management Objectives

Agriculture and livestock production in the County is necessary for the economy, its tax base, and the livelihood of the ranching/farming businesses and related industries. It is also vital to the well-being and continued health of natural resources on federal, state, and private lands. The range production of livestock and livestock grazing are management tools that are used to maintain and enhance the rangeland resource, which benefits watersheds, wildlife, water quality, and recreation, as well as providing needed forage for sustaining livestock production and wildlife habitat. Livestock grazing has been a major industry in Campbell County since early settlement and continues to be a vital part of the custom and culture of the County as well as an economic driver.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 121-122 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

4.3.3 Objectives

- Use relevant scientific data and rangeland monitoring data to support any modification of AUMs on state and federal lands.
- Consult and consider the input of permittees/lessees on any proposed changes of use to permits/leases.
- Whereas the BLM Buffalo Field Office has determined livestock grazing to be an acceptable use on 99% of the BLM-administered lands within the Buffalo planning area8, and completed an evaluation to determine 9,992 acres where grazing is incompatible with other resource uses9 State and federal agencies shall not permit the relinquishment, transfer, or retirement of livestock grazing AUMs in favor of conservation, wildlife, or other uses.

- State and federal agencies shall not impede the control of noxious weeds and pests in order to maintain the long-term economic productivity of the rangeland for livestock and wildlife grazing.

In addition, Campbell County encourages BLM to be consistent with the BLM Land Health Standards LHS) and specifically Standard 4 which addresses special status species management (SSS). Furthermore, the management prescriptions pertaining to livestock grazing identified in Chapter 2 (page 2-104, Table 2-12) of the DEIS should be made consistent in Chapter 4 and throughout the entirety of the document.

Specific to Adaptive Management (AM) and grazing in Alternatives 3-6, BLM has removed livestock grazing from the narrative and embedded it in the alternatives table in Chapter 2. The language in the alternatives table for AM is not consistent with current BLM rules and regulations, nor is it consistent with the Alternatives for Livestock Grazing in Chapter 2.

BLM should allow for grazing to be included in the AM process and be consistent with existing alternative language. BLM uses the terms "causal" and "contributing factors" incorrectly. Livestock grazing must be identified as a significant causal factor for LHS SSS before any modifications occur to a livestock grazing permits or leases. The County requests that the following language be considered in the alternatives: Specific to GrSG habitat, manage livestock grazing in a manner that 1) meets or makes progress toward meeting the Land Health Standard for special status species, and applies the guideline that addresses "restoring, maintaining, or enhancing habitats of...special status species to promote their conservation." (43 CFR Part 4180.2(e)(9))

Moreover, under Alternative 3, BLM analyzed for a "no grazing" alternative for all states stating "...Because PHMA would be unavailable for livestock grazing, no overarching livestock grazing objective would be needed." This alternative is economically and technically unfeasible to implement as it is in violation of the Taylor Grazing Act. The most appropriate action, as identified by the CEQ NEPA Regulations, would have been for BLM to consider it and eliminate it from further analysis as it does not meet the standard of alternatives that should be analyzed as "technically or economically" feasible. The County is strongly opposed to a "no grazing alternative" in any form.

Regarding fencing, the County generally supports wildlife friendly fencing; however, BLM must coordinate with the applicable grazing lessees should the removal of fencing be considered as those decisions could impact grazing allotments and management of the resource. Finally, any changes in grazing management should consider effects to the adjoining private or state lands as this could impact grazing management practices.

As demonstrated, agriculture production and livestock grazing are significant for the Counties. Not only do they provide an important tax base, the industry is a historical part of the local custom and culture. In the preferred alternative, the County supports the maximum amount of animal unit months (AUMs) being available for livestock grazing on BLM lands in PHMA and GHMA.

VI. Mitigation

Wyoming remains committed to working with its federal partners to develop a mitigation strategy that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. While BLM must adhere to its mitigation hierarchy (avoid, minimize, rectify, reduce, compensate), the County encourages the federal agency to work with the State of Wyoming by following the well-founded

principles in the EO regarding adaptive management and the mitigation framework which includes steps for requiring compensatory mitigation. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner and provides regulatory certainty for all parties involved.

VII. Private Property Rights

As stated earlier, Campbell County is rich in federal resources as our lands are comprised of approximately 12.5% *federal surface* and an estimated 87.5% *federal minerals*. Farming, ranching, energy development, tourism and recreation contribute heavily to the heritage of the County. Rangeland used by livestock and agricultural producers continues to be the dominant land use and federal agencies should consider the effects their decisions will have on neighboring private lands.

Furthermore, access to, or restrictions from, crossing federal, state, or county managed lands should not entail encumbrances or constraints on private property. Private property rights are the cornerstone of our County and must be protected to ensure that our continued customs and culture remain intact. When an agency decision or proposed action will have a negative impact to the current use of neighboring private lands, that federal undertaking may not be supported by the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 15-16, 73-74 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

2.3 Objectives

- Strive for no net loss of private lands in Campbell County. Net loss shall be measured in acreage and fair market value.
- Seek to ensure that private property rights are protected in state and federal planning processes.

3.9.3 Objectives

- State and federal agencies shall be encouraged to provide financial and material support for private landowners in resource enhancement to provide enhanced habitat for wildlife.

4.4.6 Objectives

- Recognize and venerate private property rights in mineral resource development;
- Recognize and venerate the right of private property owners to determine standards and practices on their private land.

4.7.6 Objectives

- Do not encumber or restrict private property rights or privileges with access to or across state or federal lands.

Campbell County is particularly concerned about the failure of the DRMPA from analyzing the effects on neighboring state and private lands in the analysis area. Whether described as adjacency effects or cumulative

effects, in a state where the BLM manages approximately 18 million surface acres and 41 million subsurface acers (66% of the state), there are substantial impacts to private and state lands across the decision area.

Management and ownership patterns lack uniformity creating a complex and interwoven mix of state, private, and federal minerals that are often "coproduced." The scale of coproduction can vary in degree and can be described in several ways. First, oil and gas can be coproduced by an individual wellbore that crosses through and produces the varying mineral estates. Second, oil and gas can be coproduced inside a drilling and spacing unit, where specific production is pro-rated to the percent of ownership in the drilling area. Finally, oil and gas can be coproduced across the entirety of a company's development play.

Oil and gas companies, like any other enterprise, must take into account risk/reward, scalability for cost saving, future development potential, infrastructure needs, and regulatory regimes. Operators prioritize areas for development where they can maximize returns and reduce risks. In the current phase of development in Wyoming's Powder River Basin, operators have large swaths of development to minimize risks, provide operational flexibility, and cost share infrastructure.

Even where a wellbore doesn't penetrate federal minerals in a particular drilling and spacing unit, gathering lines, pipelines, transmission lines, and roads to get product to the market inevitably run into federal management at some juncture. Therefore, ROW and surface occupancy restrictions have significant implications for private and state lands and minerals.

This analysis needs to be included in DRMPA. The BLM should acknowledge and analyze the cumulative effects of restrictions on the socioeconomics of our communities. The BLM's socioeconomic analysis should describe the human interests and values shaping public lands management, identifying effects of proposed actions on communities and economies, and promote the economic and social sustainability of communities near public lands.

VIII. Adaptive Management

Wyoming has worked diligently with its federal partners (BLM and USFWS) to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner.
Under Wyoming Statute § 23-1-103, "...all wildlife in Wyoming is the property of the state..." and the Wyoming Game and Fish Department (WGFD) has the legal responsibility for carrying out the purposes of this act. Using the best available science in the Adaptive Management process is necessary to continue long-term healthy populations of GrSG. Recognizing the WGFDs expertise, the State's Adaptive Management strategy places the responsibility of conducting annual population data squarely with the state agency. It is imperative that BLM recognize the WGFDs authority and expertise in this process. The County implores BLM to defer to the WGFD regarding any data collection or management decisions that pertain to the population trend analysis of GrSG within the boundaries of Wyoming.

IX. Wild Horses

In 1971, Congress enacted the Wild Free-Roaming Horse and Burro Act (Public Law 92-195), which guides the management, protection and control of wild horses and burros on federal lands managed by the USFS and BLM. Herd Management Areas (HMAs) were established in ten Western states based on the existing

populations during the passing of the Act in 1971. This Act also mandates that wild/feral horses and burros are managed in a thriving ecological balance with the land and as part of the natural landscape (USFS 2021b). To ensure wild/feral horse and burro populations remain in good condition and that federal lands are protected from degradation, the growth of wild/feral horse and burro herds must be actively managed.

Population control is necessary to protect fragile ecosystems, balance shared use of resources by wildlife, and maintain herd health and protect herds from starvation. Campbell County encourages aggressive wild horse and burro management that will not adversely impact rangeland resources, livestock or grazing, wildlife habitat or resources, soil resources, or other varied land uses.

The only viable alternative analyzed that appropriately addresses actual management of wild horse and burros is Alternative 3 (page 2-114, Table 2-13). Managing for "zero" Appropriate Management Levels (AMLs) within HMAs that overlap with PHMA and removing wild horses in those areas is the proper land management prescription and is the only realistic method for meeting AML at the implementation level. For the benefit of the GrSG, all available agency tools must be used to support herd management plans that prevent habitat degradation and native wildlife displacement, including the removal of all wild horses and burros from PHMA.

The State of Wyoming submitted alternative language for wild horses that based any removal of HMAs on whether wild horses were the causal factor of range degradation for a certain period of years. While substantial evidence already exists, that wild horses cause significant range damage and negatively impact GrSG, Wyoming's recommended approach would have been more economically, politically, and scientifically defensible. Unfortunately, this alternative was not properly considered in any of the other alternatives.

X. Lack of Need for ACECs

The WCCA conducted a consistency review on a statewide basis of the DEIS alternatives in relation to ACECs and county natural resource plans, which is summarized in the attached table. In addition to the consistency table, the text below details the concerns regarding the BLM's inadequate and untimely consistency review and the unnecessary designation of ACECs in areas with existing and adequate PHMA designations to manage for and protect GrSG.

An ACEC is defined as "areas within the public lands where special management attention is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a).

A potential ACEC must satisfy a three-part test before it may be designated. First, it must have "relevance," meaning it possesses "a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard." 43 C.F.R. § 1610.7-2(a)(l). Second, it must also have "importance," meaning the relevant values identified in the first step must have "substantial significance and values." 43 C.F.R. § 1610.7-2(a)(2); see also BLM Manual 1613, Section 1 l.B. For the relevance values to meet the "importance" threshold, the area must have "more than locally significant qualities ... compared to any similar resource," have qualities that make it fragile, rare, or irreplaceable, or been recognized as warranting protection to satisfy national priority concerns. BLM Manual 1613, Section 11.B.1. Third, the nominated area must require "special management" "to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish, wildlife, and plant resources, or other natural system or processes." 43 U.S.C. § 1702(a).

Certainly, ACECs can play a role in conservation and special management of historic, cultural, scenic, fish and wildlife resources. However, the BLM has not demonstrated how the addition of the proposed ACECs under Alternative 3 of the DEIS will improve Greater Sage-grouse populations and habitat more effectively than Priority Habitat Management Areas (PHMAs). Under Alternative 3, the DEIS states that the ACECs would be managed similarly to PHMAs, without additional management prescriptions. Campbell County strongly feels that the designation of ACECs under Alternative 3 are unnecessary given that they will be managed exactly the same as PHMAs. The BLM fails to consider how GrSG populations and habitat are already protected under existing management actions and will be further protected by the proposed management actions under Alternatives 3 of the DEIS. A significant example of this failure is the BLM's attempt to layer ACEC designations on top of existing ACECs like in Fremont and Sublette Counties.

Furthermore, ACEC designations could allow for excessive regulatory authority in the future for areas that are otherwise considered appropriate for PHMA management. Unnecessary designation opens the door for further impediments to multiple use practices.

Campbell County strongly opposes the designation of any Sage-grouse ACECs in Wyoming. As discussed earlier in these comments, we have worked diligently as a state to develop a framework that effectively manages for GrSG populations and its habitat and no new ACEC designations are warranted nor will they provide any additional protections not already in place.

XI. Fluid Mineral Development and Leasing Objective

Likely the most substantial direct impact to local government revenue in Wyoming is the management prescription for oil and gas development. Consequently, it is vital to correctly capture existing development and the Reasonably Foreseeable Development Scenario (RFDs). The RFD is even more important to get correct when it is comparing the potential impacts from wildly inconsistent alternatives. If poor or incorrect data is utilized to develop the RFD, then the RFD and resulting socioeconomic analysis will be flawed.

Certain portions of the BLM's description and analysis of existing oil and gas could be improved. For example, on 12-38 the BLM reports 9,127 wells have been "drilled" in Wyoming between 2013 and 2023. However, this figure includes workovers and wells that were never completed, which may capture wells that were never actually "drilled." The section properly includes data from the Wyoming Oil and Gas Conservation Commission, which reflects a total of 6,455 unique well spuds in Wyoming between 2013 and 2023. However, the fact that the state's number is 30% less than the BLM's number reflects a poor attempt to gather and clean-up the data for analysis.

On page 12-39, the DRMPA states that 24% of the HMAs in Wyoming are under an existing authorized lease. Additional data that should have been reflected in the DRMPA and clarified in this section is the number of leased acreage currently under litigation in Wyoming. Without including litigated leases in Table 35, it is misleading to members of the public that equate "authorized" as available for development.

In order to understand whether the RFD is truly reasonable there should be a greater description of what was utilized for inputs and variables. Table 35 in Appendix 12 would benefit from a better description of the "source" of the data provided in the table. In addition, there needs to be additional description of the table to help clarify whether these projected wells are federal surface and minerals, private/state surface and federal minerals, or mixed minerals and surface, etc.

The "Projected Production by Alternative in the Decision Area" needs to be amended to more accurately reflect the decline curves associated with modern horizontal development in Wyoming. Without any written description or justification, the projection utilizes a record production year in Wyoming as its basis for production over the next 20 years. In other words, the current projections do not consider decline curves of existing and new wells but keep historic production levels constant. However, it must be noted that the only way to maintain that statewide production level as production declines from existing wells is to drill and produce new wells.
The problem with maintaining existing production as a constant in the RFD is that it artificially reduces the negative economic impacts associated with alternatives 3 and 4 reduced projected well development. This is because the weight given to new wells is significantly reduced by the artificial base production of the existing wells.

Under Alternative 3 only 4,284 wells are expected to be drilled in the next 20 years. This is compared to Alternative 1 that projects 14,450 wells drilled in the same period of time. Although alternative 3 projects over 10,000 less wells are drilled in 20 years it only reduces the production of oil by roughly 224,000,000 barrels and gas by 4,600,000,000 mcf of gas.

Taxes derived from oil and gas development in Wyoming constitutes a significant portion of state and county revenue used to pay for public education and essential services, including roads, fire protection, emergency medical services, courthouses, libraries, landfills, hospitals, law enforcement, airports, recreation, and senior citizen centers. To further illustrate its importance, the assessed valuation in Campbell County alone for oil and gas in Fiscal Year 2022 is approximately $1.6 billion.

Oil and gas companies operating in Wyoming are assessed property (ad valorem) taxes by counties and severance taxes by the state. Although they are called "taxes" both are more akin to a royalty because production is taxed regardless of whether an operator makes a profit. Property taxes on oil and gas vary by county and range from 6-7.3% calculated by the gross revenue of the previous year's production and the value of tangible equipment and improvements. Severance taxes are calculated at 6% of gross revenue in the same manner as royalty taxes (gross revenue minus transportation and gas processing cost). Federal Royalties are also deducted from the gross revenue for the purpose of calculating severance taxes.

Property taxes on oil and gas account for over 40% of the total property taxes levied by counties in Wyoming. In 2020, the property taxes collected by counties exceeded $600 million. Additionally, severance taxes collected by the state in 2022 topped $275 million. When adding in federal lease revenues, federal and state royalties, sale and use taxes, and conservation taxes, the industry contributed $1.23 billion in taxes to state and local governments.

Furthermore, ad Valorum taxes associated with oil and gas production generated an average of over $12,000,000 a year for Campbell County the last 5 years. This represents over 25% of all property tax paid in the County. A decrease in assessed valuation will affect all County operations including road and bridge construction and maintenance, investment in IT technology and cyber security, economic diversification investment (water, sewer, and streets), fire equipment and personal, and daily operations.

As noted on the Petroleum Association of Wyoming (PAW) website, Wyoming ranked 8th in production of both crude oil and natural gas in 2022 nationally. Further, Wyoming ranked the 2nd largest producer of both oil and natural gas on federal lands, making the state disproportionally affected by national policy changes.

According to a 2023 study released by the American Petroleum Institute, in 2021 the oil and natural gas had the following impacts on the Wyoming economy: 58,780 total jobs and $5.7 Billion in labor income.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 132-133 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

4.4.6 Objectives

- State and federal agencies shall:
  - not limit or infringe upon the ability of private mineral owners to access, extract and transport their mineral resource, including in areas determined set aside for no mineral leasing on federal lands, if that determination takes place after leasing has already occurred or adequate compensation shall be provided;
  - provide clearly defined mapping and data to warrant any kind of cultural, paleo, plant or wildlife inventory on private lands
  - Base wildlife buffers, occupancy stipulations, and restrictions on peer reviewed and approved credible scientific data and share in writing with any affected private property owner upon request.
  - Make available voluntary, compensatory mitigation measures, both on and off-site,
  - to mineral resource development companies conducting activities within wildlife buffers, occupancy stipulations, and restrictions.
  - Resolve conflicts between competing mineral resource industries in an effort to maximize production and sustained economic returns.
- Coordinate, cooperate, and consult with local governments and potentially affected stakeholders, including private landowners, on proposed and pending federal actions regarding mineral development;
- Except for Congressional withdrawals, federally managed lands shall remain open and available for mineral resource exploration, development and production, unless
- administrative withdrawal or other action is necessary to protect the national security and withdrawal procedures are fully followed.

Funding derived from mineral development constitutes a significant portion of State and County revenue used to pay for essential services, including roads, fire protection, courthouses and judicial systems, libraries, landfills, hospitals, law enforcement, airports, recreation, public health, and senior citizen centers. Any curtailment of leasing and development activity significantly impacts the socio-economics of the communities and eliminates a critical funding stream for not just our County but all counties, the State of Wyoming and its residents.

Our ability to fund organizations would be negatively affected, which includes but is not limited to, the following: WY Child and Family Development, Children's Advocacy Project (forensic interviewing of sexually assaulted and abused children), Human Resource Council, 'Youth Development Services (Youth Crisis and Intervention Center)', Humane Society, Boys and Girls Clubs, County Fair Boards, Hope Center (Domestic Violence and Sexual Assault Survivors Crisis Center and Shelter), local Libraries, Behavioral and Mental Health Crisis and Intervention Centers, Economic Development organizations and various youth and community recreation organizations. Without County support these organizations will offer fewer public services and could fail and there would be insufficient funds to provide basic services at a level needed for the protection of the county resident's health, safety, and security.

It cannot be stated enough the importance that the oil and gas industry plays in Wyoming. BLM must do all it can to find a balance between GrSG species and habitat protection with continued mineral leasing and development. This balance must be made in consideration of the interwoven land ownership patterns across Wyoming.

XII. Transportation and Transmission Objectives

Public access to routes of travel is essential to the County's transportation and public access systems and to the economic, social, political well-being, customs and culture of the communities. Many private landowners need rights-of-way across state and federal lands to access their property, to use their water rights, and to exercise their grazing rights. Rights-of-ways (ROW) and corridors provide for the development of certain types of infrastructure or facilities that are in the public interest on federal lands for a specified period of time.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Page 155 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

4.7.6 Objectives

- Notify, within a reasonable time period, all potentially affected land holders regarding proposed new transportation routes, re-routing, or closure of transportation routes affecting their property by entity proposing such routes.
- Do not encumber or restrict private property rights or privileges with access to or across state or federal lands.

Regarding approved access for transportation or transmission within PHMA, the County will support the Wyoming EO and the surface disturbance DDCT process for determining access. However, we strongly encourage BLM and the state to coordinate and consult with the affected County regarding any planning process or activity that restricts, eliminates, increases, or decreases access to federal or state lands and allow the County the opportunity to resolve any potential conflicts with the County's objectives, principles, and policies, prior to acting.

XIII. Socioeconomics

Economic impacts do matter. Access to federally administered lands and resources are critical to ensure the socioeconomic well-being, custom, culture and stability of our communities. In Campbell County, lands under federal or state control and decisions made for public land management can directly impact the service and non-service industries, public accessibility, and the demographics of an area. Effective coordination and consultation between the County, federal and state agencies is critical to ensuring that land management agencies thoroughly consider the effects that proposed actions have on custom, culture, and economic stability; conservation and use of the environment and natural resources in the County along with multiple use. Counties receive revenue from federal lands in many ways including mineral leasing and development, agriculture, recreation, travel and tourism, etc. Any curtailment of access to public lands will directly impact the socioeconomics of the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 107-108 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

4.1.9 Objectives

- State and federal agencies shall:
    - Notify, at the earliest point, Campbell County of any proposed action, change of existing activities, newly permitted activities, or changes in regulations that may affect the economic base of the county.
    - Include Campbell County in the review of any proposed developments and in any decision-making processes.
    - Collaborate and consult with county agencies and the public to determine the full scope of potential social and economic effects of activities occurring on public lands and Campbell County should be notified of such discussions.
    - Collaborate with county agencies to develop a meaningful and relevant mitigation plan to address any direct or indirect negative social or economic effects resulting from a state or federal agency permitted activity or planning action.
    - Enforce the economic mitigations set forth in approved mitigation plans.
- Consider opportunities for economic development based on project merits and a comprehensive evaluation of the impacts to local or regional economic conditions;
- Perform a socioeconomic impact analysis for each land management activity or decision related to state and federal properties; these analyses shall be conducted by experts familiar with the area's unique history, culture, economy and resources.
- Include in socioeconomic impact analyses a description of existing social, demographic, and economic conditions; the analytical methodologies; and the impacts to a comprehensive set of topics, including, but not limited to: population, employment, income levels, industry activity, housing, community services, utility services, schools, fiscal impacts to the county and local jurisdictions, public revenues, public expenditures, transportation, social conditions, and quality of life.
- Address in socioeconomic impact analyses the impacts of all phases of development or other activities, including construction and long-term operations, and all impacts of changes in regulations or other long-term planning strategies.
- Make socioeconomic impact analyses that are developed by state and federal agencies publicly available to all county officials, residents, or other citizens.
- Revise and modify socioeconomic mitigation plans over time in response to actual, on the ground conditions. Monitoring socioeconomic impacts and adapting the response to those impacts will be needed in order to properly mitigate certain actions.

The County cannot state clearly enough the importance of our ability to access federal lands to drive vibrant economic communities. BLM significantly undervalued the mineral contributions to the counties and state in the socioeconomic section. BLM must include a robust socioeconomic analysis clearly demonstrating the differences between management prescriptions in the Alternatives, which includes impacts to the tax base (royalties, rents or bonus bids, severance taxes, ad valorem taxes, sales and use tax employment income, and direct and indirect employment.) The County can assist in providing the most up-to-date information available for BLMs analysis.

In conclusion, Campbell County is committed to continuing our engagement as a cooperating agency along with the State of Wyoming, its state agencies and BLM to work through these important issues. We encourage BLM to align with the most recent Wyoming EO, include acknowledgement and analysis of the Wyoming State Alternative and to develop a preferred alternative that takes into consideration our comments submitted herein.

Should you have questions or require additional information, do not hesitate to contact Commissioner Butch Knutson at 307-682-7283 (butch.knutson@campbellcountywy.gov) or our natural resource policy advisor Dru Palmer at 307-388-2709 (dru@wyoming.com).

Sincerely,

Del Shelstad, Chairman
Board of Campbell County Commissioners

CC: The Honorable Governor Mark Gordon
The Honorable United States Senator John Barrasso
The Honorable United States Senator Cynthia Lummis
The Honorable United States Congressman Harriet Hageman

June 13, 2024

Greater Sage-grouse Land Use Plan Amendments EIS Comments
ATTN: HQ GRSG RMPA
U.S. Bureau of Land Management - Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101

Submitted via Federal eRulemaking Portal
Portal: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning (Federal Register/Vol.89, No. 52/Friday, March 15, 2024/Notices)

Dear Ms. Pat Deibert:

On behalf of the Big Horn County Board of Commissioners (County), please accept this letter as comments for the Bureau of Land Management's (BLM) Greater Sage-grouse (GrSG) Draft Resource Management Plan Amendment (DRMPA) and Draft Environmental Impact Statement (DEIS). The management of GrSG continues to be of great importance to us and working with federal agencies to pursue a balance between Sage-grouse conservation, multiple use of public lands, energy development and the protection of private property is critical to the long-term health of our County and the State of Wyoming.

As a member of the Wyoming County Commissioners Association (WCCA), Big Horn County has been actively engaged in the GrSG RMPA process, today and historically during the 2015 and 2019 plan amendments. In addition, we have participated in the Governor's Executive Order process including the development of Wyoming Executive Order 2015-4 and 2017-2, and most recently the updated Executive Order 2019-3. The County has demonstrated through numerous efforts that we have a vested interest in proactive management of GrSG to prevent a threatened or endangered listing under the Endangered Species Act (ESA).

In Wyoming, counties serve as a legal arm of the state entrusted with carrying out statutory and regulatory goals at the local level. Counties operate at the forefront to ensure our communities are economically vibrant, safe, and healthy places to live and work. Wyoming counties serve as partners and co-regulators of the 18.4 million acres of BLM surface lands and 42.9 million acres of federal mineral estate that fall within our jurisdictional boundaries and uniquely contain varying percentages of federal, state, and private land, which need thoughtful management. Specifically, Big Horn County lands are comprised of approximately 76.5% of *federal surface* and an estimated 81.5% of *federal mineral estate.*

Furthermore, as co-regulators, Big Horn County has prepared a Natural Resource Management and Comprehensive Land Use Plans to serve as the basis for communicating and coordinating with

the federal government and its agencies on land and natural resource management issues. Wyo. Stat. § 18-5-208(b). Communication, coordination, and collaboration with the BLM is vital, especially where significant BLM land and minerals exists, and management decisions can significantly impact the regulatory framework, customs, culture, and socioeconomics of our counties.

As partners, Counties work diligently to support the work of our federal land managers to overcome shared challenges and achieve mutual goals. Our counties actively participate with Wyoming BLM field offices and the Wyoming State BLM office on National Environmental Policy Act (NEPA) projects, trainings and presentations, and special initiatives. This proposed Plan Amendment is no exception, as Wyoming counties participated as cooperating agencies in BLM meetings and provided administrative draft comments, where allowed.

In response to this DEIS, Big Horn County submits the following detailed comments for BLM's consideration specific to this plan amendment:

I. General

- State of Wyoming – Big Horn County endorses, and incorporates by reference, comments submitted by the State of Wyoming.

- Wyoming County Commissioners Association (WCCA) – Big Horn County endorses, and incorporates by reference, comments submitted by WCCA.

II. Support for the Wyoming GrSG Executive Order 2019-3 (EO) and State Alternative

Big Horn County has gone on record numerous times, strongly supporting BLM's alignment with the Wyoming EO to the greatest extent possible. Big Horn County believes the steps taken by the BLM in the past to align with the EO is critical to successful population and habitat management. Further, coordinating and combining resources between the state, local governments and federal agencies ensures the success of long-term management approaches that benefit the species.

The creation of the Sage-grouse Implementation Team (SGIT), an on-going process occurring between a cross section of stakeholders representing a multi-jurisdictional, cross-governmental and citizen-inclusive collaborative working group, focused on developing a satisfactory management strategy to protect GrSG and its habitat. The regulatory framework ultimately developed by SGIT and incorporated into the Wyoming EO resulted in the support of the United States Fish and Wildlife Service (USFWS) as a regulatory mechanism that would in fact protect long-term viability of Sage-grouse habitat and Sage-grouse populations; thereby, avoiding a listing under the ESA.

Wyoming has worked diligently to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. Many of the issues BLM is now readdressing in this latest series of NEPA analysis includes: Priority Habitat

Management Area (PHMA) mapping, habitat objectives, approaches to minimizing surface disturbance in PHMA, effects of livestock grazing, mitigation strategies including compensatory mitigation, mitigation recommendations for fluid mineral development within PHMA and General Habitat Management Area (GHMA), wild horse and burro management, adaptive management prescriptions and strategies for short-and-long term monitoring, which are all addressed in depth by the Wyoming EO.

BLM should continue to join Wyoming in supporting this EO and the regulatory framework as being the most effective for protecting the species and its habitat and allowing for a flexible strategy addressing changing conditions in a timely manner.

To this point, the State of Wyoming submitted a proposed State Alternative to be analyzed in this DEIS, which provided consistency with the EO. BLM failed to incorporate that proposed state alternative in the analysis as stating it was submitted to BLM too late in the process to be included as a stand-alone alternative. The County strongly encourages BLM to include or acknowledge the State's Alternative in the Final EIS with a sufficient explanation as to why it was not addressed in the analysis to date.

III. Cooperating Agency Process

The cooperating agency process was not without disagreement or frustration as our opportunity to engage with the federal agency, as outlined by the Counsel of Environmental Quality's (CEQ) NEPA regulations and was written into our MOUs, was ignored by the BLM. When these conflicts arose, Wyoming counties did everything in our power, and in accordance with our MOUs, to raise concerns expeditiously to resolve issues, as expressed in our candid conversations and frank letters.

While the DRMPA expresses numerous successes for cooperation throughout the process, there were certainly places that could have been improved. We also realize that the BLM is generically referred to, however, it must be clarified that this process was not run by the Wyoming state office but rather BLM Headquarters. This enlarged scale may be partly to blame for process failures during the cooperating agency process.

Unfortunately, Wyoming counties were powerless in directing how the BLM ran its cooperating agency process and meaningful opportunities for participation in the amendment process were far and few between. In an attempt to remedy this problem, Wyoming counties verbally requested improvements and sent numerous letters asking the BLM to improve the cooperating agency process and work in good faith with cooperators.

Our first letter in June of 2023 asked the BLM to develop a regular schedule of meetings (previous meetings were sprung on cooperators with minimal notice), to provide documents to review before the meetings, and to have the individuals at the BLM actually in charge of drafting the documents in the meetings. BLM did set up regular meetings and invited members of BLM HQ to participate, but documents were not shared with cooperators in advance of ,or after, the meetings.

Our second letter in August of 2023 requested the BLM follow its MOU which detailed how cooperators would be assisting in the determination of the purpose and need, development of the alternatives and management prescriptions, along with an estimation of effects of implementing each alternative. Up to this point, cooperators had only been used as editors of small portions of the management prescription tables (never impact analysis), without having the benefit of previously discussing the management prescriptions in a cooperating agency meeting.

The Western Governors' Association (WGA) wrote a similar letter to the BLM outlining concerns that it had with the mapping process, the lack of inclusion of state plans as separate alternatives, and inconsistent information shared to members of its taskforce. This letter prompted the BLM to engage the WGA Taskforce in cooperating agency meetings. While a positive development for Taskforce members, counties serving as cooperators were not invited. Additionally, it became clear that the BLM was treating the Taskforce differently as it began to share many of the documents requested by counties with the Taskforce, albeit with a disclaimer "that these documents not be shared beyond the SG Task Force."

Our third letter in December of 2023 expressed our exasperation of being given an administrative draft, most of which we had never seen or discussed, to review over the Christmas Holiday. This was the first time that any information concerning the environmental or socio-economic impacts from the range of alternatives was provided to cooperators. Unfortunately, the BLM administrative draft was largely incomplete, inconsistent, and had several sections that were simply incorrect. Specifically, it lacked impact analysis for an entire alternative, it presented erroneous acreage figures and tables for Wyoming, and was woefully inaccurate in its description of socioeconomic impacts from fluid mineral leasing and development.

The BLM acknowledged these errors and promised Wyoming cooperating counties a second review of an updated draft of the socioeconomic sections before the release of the public draft. The BLM failed to uphold this promise and cooperators were never shown updated socioeconomic information before the draft went public.

IV. Consistency with Big Horn County Natural Resource Management and Comprehensive Land Use plans

The Federal Land Policy and Management Act (FLPMA), which governs the BLM, provides detailed requirements for "coordination" and "consistency" with local government land use plans. FLPMA states:

> To the extent practical, the BLM must stay apprised of local land use plans. The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration. To the extent practical, the BLM must assist in resolving inconsistencies between local and BLM land use plans. The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. 43 U.S.C. § 1712(c)(9).

There is no indication in the DEIS that BLM was apprised of local land use plans or assured that those plans were given consideration as required by FLMPA. Nowhere in the DRMPA does the BLM even quantify the local plans within the amendment area, not to mention, assure those plans are given consideration. At a minimum, the BLM should include a list of the local land use plans that are within the amendment boundary. For further assistance, Big Horn County has attached its Natural Resource Management and Comprehensive Land Use Plans, dated November 2020 and January 2010 respectively, in their entirety for your consideration.

FLPMA also requires that within the environmental consequences section of an EIS, the BLM include a discussion of all "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(a)(5). Further, where any inconsistency exists, the BLM is required to provide a statement describing "the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d). An RMP may be inconsistent with local plans only where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and regulations applicable to public lands. *Id.*; 43 C.F.R. § 1610.3-2(a).

There is no discussion of possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. Not only does this discussion concern local land use plans, but the BLM must also discuss the conflicts with its own mandates and laws. Specifically, it should discuss the obvious conflicts present in Alternative 3 with its multiple use and sustained yield mandate.

The BLM seems to suggest it does not need to do additional consistency review when it states on page ES-12: "Some counties identified their preference for management actions from one alternative or another. It is important to note that these preferences did not specifically cite state or county plan, program, or policy language."

This statement is false and should be removed from the DRMPA. Counties and the State of Wyoming both provided verbal and written comments and identified preferences of management actions based on the State's EO and county plans, programs, and policies. To the extent that additional citation or specificity was desired, the BLM should have asked for it and provided an opportunity for cooperators to provide it.

The DEIS rightfully acknowledges on page 1-12 that "BLM RMPs be consistent with officially approved or adopted resource-related plans of other Federal, State, local, and Tribal governments and policies and programs contained therein, to the extent that they are consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands." However, the DEIS does not address inconsistencies with local plans but instead, claims that the BLM will identify inconsistencies in the Final EIS after receiving comments from state and local government agencies.

Big Horn County believes that the BLM's approach of waiting until the final stage to address inconsistencies in the EIS is flawed. This delay prevents state and local government agencies from providing input during the drafting phase, which could have led to substantive comments that

might alter the project's components and subsequent analyses. A federal agency should not address consistency solely by responding to concerns raised through comments. Instead, the BLM should have taken an active approach in identifying inconsistencies and addressing them in the DEIS. It is clear that the process by which BLM included a thorough consistency review of the Big Horn County local natural resource plan fell far short of adequate and examples of specific inconsistencies will be detailed in this letter below.

IV. Disturbance Caps

The County recognizes the importance and necessity of establishing appropriate disturbance caps to ensure that disturbance to an area does not exceed tolerance levels of the GrSG. The Wyoming State Legislature, federal, state and local agencies, industries, conservation organizations, and landowners have dedicated significant time and resources to conserve GrSG populations in the State. We have shown the capacity and authority to protect and manage the species and its habitats on all lands by establishing oversight mechanisms and implementing protection measures, including developing a disturbance cap using the Density Disturbance Calculation Tool (DDCT). The DDCT establishes a disturbance cap of 5% for suitable GrSG habitat per an average of 640 acres over the entire DDCT assessment area.

To align with the State's EO for GrSG management strategies and to facilitate prompt calculations of disturbance areas, the County suggests that Wyoming be exempt from the 3% HAF fine scale disturbance cap, regardless of the chosen alternative under the EIS. While the BLM would still be able to gather and quantify whatever disturbance data it chooses, the 3% HAF fine scale disturbance cap should not be another disturbance calculator for permit authorization.

Currently, the disturbance levels in Wyoming, including those from fire and agriculture, are well below the 3% cap, making the requirement to meet this cap largely redundant and an inefficient use of time. Moreover, since the 3% HAF fine scale disturbance cap overlooks disturbances from fire and agriculture, which the DDCT includes, utilizing the DDCT for calculating the disturbance cap offers a more inclusive and simpler approach.

As stated earlier, the County supports the Wyoming EO including the utilization of the 5% surface disturbance cap along with the DDCT process, which has proven to be a sufficient management tool of surface disturbing activity within PHMA (core) habitat.

Additionally, the introduction of two disturbance caps could eventually lead to scenarios where one cap is met but the other is exceeded. The DEIS lacks clarity on how the BLM would manage such situations, potentially opening the door to disputes and outside legal challenges. Big Horn County is concerned that any perceived discrepancy between the two disturbance calculations could fuel litigation from parties with the intent on halting the permit process. Clarity is key.

If the BLM proceeds with dual disturbance caps, the County would expect the agency to honor its verbal commitment made at the SGIT public meeting on May 29th, 2024, to engage with the State of Wyoming when discrepancies between disturbance caps arise.

Ultimately, by adhering to the established DDCT 5% disturbance cap, the BLM would not only effectively safeguard the habitat of the GrSG from excessive disturbance but also circumvent unnecessary project delays that could stem from additional coordination and potential litigation.

V. Grazing Management Objectives

Agriculture and livestock production in the County is necessary for the economy, its tax base, and the livelihood of the ranching/farming businesses and related industries. It is also vital to the well-being and continued health of natural resources on federal, state, and private lands. The range production of livestock and livestock grazing are management tools that are used to maintain and enhance the rangeland resource, which benefits watersheds, wildlife, water quality, and recreation, as well as providing needed forage for sustaining livestock production and wildlife habitat. Livestock grazing has been a major industry in Big Horn County since early settlement and continues to be a vital part of the custom and culture of the County as well as an economic driver.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 100-105 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- 7.2 Livestock Grazing Resource Management Objectives –
  A. Livestock grazing is maintained as a viable major component of the economy, custom, and culture of Big Horn County.

- 7.2.1 thru 33 Livestock Grazing Priority Statements –
  1. Federal lands within Big Horn County shall continue to be managed for multiple-use and sustained yields, which includes continued grazing as intended by Congress in the passage of the Taylor Grazing Act, FLPMA, MUSY, and NFMA
  9. Support management plans generated for the overall health of all natural resources. Plans specifically managing for one species are not supported.

In addition, Big Horn County encourages BLM to be consistent with the BLM Land Health Standards LHS) and specifically Standard 4 which addresses special status species management (SSS). Furthermore, the management prescriptions pertaining to livestock grazing identified in Chapter 2 (page 2-104, Table 2-12) of the DEIS should be made consistent in Chapter 4 and throughout the entirety of the document.

Specific to Adaptive Management (AM) and grazing in Alternatives 3-6, BLM has removed livestock grazing from the narrative and embedded it in the alternatives table in Chapter 2. The language in the alternatives table for AM is not consistent with current BLM rules and regulations, nor is it consistent with the Alternatives for Livestock Grazing in Chapter 2.

BLM should allow for grazing to be included in the AM process and be consistent with existing alternative language. BLM uses the terms "causal" and "contributing factors" incorrectly. Livestock grazing must be identified as a significant causal factor for LHS SSS before any modifications occur to a livestock grazing permits or leases. The County requests that the following language be considered in the alternatives: Specific to GrSG habitat, manage livestock grazing in a manner that 1) meets or makes progress toward meeting the Land Health Standard for special status species, and applies the guideline that addresses "restoring, maintaining, or enhancing habitats of...special status species to promote their conservation." (43 CFR Part 4180.2(e)(9))

Moreover, under Alternative 3, BLM analyzed for a "no grazing" alternative for all states stating "...Because PHMA would be unavailable for livestock grazing, no overarching livestock grazing objective would be needed." This alternative is economically and technically unfeasible to implement as it is in violation of the Taylor Grazing Act. The most appropriate action, as identified by the CEQ NEPA Regulations, would have been for BLM to consider it and eliminate it from further analysis as it does not meet the standard of alternatives that should be analyzed as "technically or economically" feasible. The County is strongly opposed to a "no grazing alternative" in any form.

Regarding fencing, the County generally supports wildlife friendly fencing; however, BLM must coordinate with the applicable grazing lessees should the removal of fencing be considered as those decisions could impact grazing allotments and management of the resource. Finally, any changes in grazing management should consider effects to the adjoining private or state lands as this could impact grazing management practices.

As demonstrated, agriculture production and livestock grazing are significant for the Counties. Not only do they provide an important tax base, the industry is a historical part of the local custom and culture. In the preferred alternative, the County supports the maximum amount of animal unit months (AUMs) being available for livestock grazing on BLM lands in PHMA and GHMA.

VI. Mitigation

Wyoming remains committed to working with its federal partners to develop a mitigation strategy that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. While BLM must adhere to its mitigation hierarchy (avoid, minimize, rectify, reduce, compensate), the County encourages the federal agency to work with the State of Wyoming by following the well-founded principles in the EO regarding adaptive management and the mitigation framework which includes steps for requiring compensatory mitigation. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner and provides regulatory certainty for all parties involved.

VII. Private Property Rights

As stated earlier, Big Horn County is rich in federal resources as our lands are comprised of approximately 76.5% *federal surface* and an estimated 81.5% *federal minerals*. Farming, ranching, energy development, tourism and recreation contribute heavily to the heritage of the County. Rangeland used by livestock and agricultural producers continues to be the dominant land use and federal agencies should consider the effects their decisions will have on neighboring private lands.

Furthermore, access to, or restrictions from, crossing federal, state, or county managed lands should not entail encumbrances or constraints on private property. Private property rights are the cornerstone of our County and must be protected to ensure that our continued customs and culture remain intact. When an agency decision or proposed action will have a negative impact to the current use of neighboring private lands, that federal undertaking may not be supported by the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 99-100 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- 7.1 Resource Management Objectives:
  A. Agricultural production is maintained as a viable and major component of the economy, custom, and culture of the County.
  B. Federal actions affecting agriculture are made in consultation with the County.

- Private Property Protection Priorities
  2. Support and assist agencies in quickly processing permits on federal lands for the construction, maintenance, or expansion of irrigation distribution systems to private lands, and allowing maintenance where those rights already exist through a range improvement agreement.
  6. Wildlife and federal lands managers, including but not limited to the BLM, USFS, USFWS, Army Corps of Engineers, BOR, DOD, NPS, and WGFD, are expected to coordinate with private property owners to minimize impacts to private property

Big Horn County is particularly concerned about the failure of the DRMPA from analyzing the effects on neighboring state and private lands in the analysis area. Whether described as adjacency effects or cumulative effects, in a state where the BLM manages approximately 18 million surface acres and 41 million subsurface acers (66% of the state), there are substantial impacts to private and state lands across the decision area.

Management and ownership patterns lack uniformity creating a complex and interwoven mix of state, private, and federal minerals that are often "coproduced." The scale of coproduction can vary in degree and can be described in several ways. First, oil and gas can be

coproduced by an individual wellbore that crosses through and produces the varying mineral estates. Second, oil and gas can be coproduced inside a drilling and spacing unit, where specific production is pro-rated to the percent of ownership in the drilling area. Finally, oil and gas can be coproduced across the entirety of a company's development play.

Oil and gas companies, like any other enterprise, must take into account risk/reward, scalability for cost saving, future development potential, infrastructure needs, and regulatory regimes. Operators prioritize areas for development where they can maximize returns and reduce risks. In the current phase of development in Wyoming's Powder River Basin, operators have large swaths of development to minimize risks, provide operational flexibility, and cost share infrastructure.

Even where a wellbore doesn't penetrate federal minerals in a particular drilling and spacing unit, gathering lines, pipelines, transmission lines, and roads to get product to the market inevitably run into federal management at some juncture. Therefore, ROW and surface occupancy restrictions have significant implications for private and state lands and minerals.

This analysis needs to be included in DRMPA. The BLM should acknowledge and analyze the cumulative effects of restrictions on the socioeconomics of our communities. The BLM's socioeconomic analysis should describe the human interests and values shaping public lands management, identifying effects of proposed actions on communities and economies, and promote the economic and social sustainability of communities near public lands.

VIII. Adaptive Management

Wyoming has worked diligently with its federal partners (BLM and USFWS) to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner.

Under Wyoming Statute § 23-1-103, "...all wildlife in Wyoming is the property of the state..." and the Wyoming Game and Fish Department (WGFD) has the legal responsibility for carrying out the purposes of this act. Using the best available science in the Adaptive Management process is necessary to continue long-term healthy populations of GrSG. Recognizing the WGFDs expertise, the State's Adaptive Management strategy places the responsibility of conducting annual population data squarely with the state agency. It is imperative that BLM recognize the WGFDs authority and expertise in this process. The County implores BLM to defer to the WGFD regarding any data collection or management decisions that pertain to the population trend analysis of GrSG within the boundaries of Wyoming.

IX. Wild Horses

In 1971, Congress enacted the Wild Free-Roaming Horse and Burro Act (Public Law 92-195), which guides the management, protection and control of wild horses and burros on federal lands managed by the USFS and BLM. Herd Management Areas (HMAs) were established in ten Western states based on the existing populations during the passing of the Act in 1971. This Act also mandates that wild/feral horses and burros are managed in a thriving ecological balance with the land and as part of the natural landscape (USFS 2021b). To ensure wild/feral horse and burro populations remain in good condition and that federal lands are protected from degradation, the growth of wild/feral horse and burro herds must be actively managed.

Population control is necessary to protect fragile ecosystems, balance shared use of resources by wildlife, and maintain herd health and protect herds from starvation. Big Horn County encourages aggressive wild horse and burro management that will not adversely impact rangeland resources, livestock or grazing, wildlife habitat or resources, soil resources, or other varied land uses.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 82-86 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- 5.5 Resource Management Objective:
  A. Wild horses within the County shall be managed for a viable, healthy herd resulting in the thriving natural ecological balance (including the standards and guidelines for rangeland health) and multiple-uses as required by the Act.
- Priorities: 1-16
  3. Support the gathering and removal of all horses to the minimum defined AML to decrease gather frequency and minimize resource damage
  7. The County opposes any proposed enlargement or expansion of the current HMA boundaries and any additional new HMAs or HAs.
  8. Complete an inventory of wild horses at least every three years

The only viable alternative analyzed that appropriately addresses actual management of wild horse and burros is Alternative 3 (page 2-114, Table 2-13). Managing for "zero" Appropriate Management Levels (AMLs) within HMAs that overlap with PHMA and removing wild horses in those areas is the proper land management prescription and is the only realistic method for meeting AML at the implementation level. For the benefit of the GrSG, all available agency tools must be used to support herd management plans that prevent habitat degradation and native wildlife displacement, including the removal of all wild horses and burros from PHMA.

The State of Wyoming submitted alternative language for wild horses that based any removal of HMAs on whether wild horses were the causal factor of range degradation for a certain period of years. While substantial evidence already exists, that wild horses cause significant range damage and negatively impact GrSG, Wyoming's recommended approach would have been more

economically, politically, and scientifically defensible. Unfortunately, this alternative was not properly considered in any of the other alternatives.

X. Lack of Need for ACECs

The WCCA conducted a consistency review on a statewide basis of the DEIS alternatives in relation to ACECs and county natural resource plans, which is summarized in the attached table. In addition to the consistency table, the text below details the concerns regarding the BLM's inadequate and untimely consistency review and the unnecessary designation of ACECs in areas with existing and adequate PHMA designations to manage for and protect GrSG.

An ACEC is defined as "areas within the public lands where special management attention is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a).

A potential ACEC must satisfy a three-part test before it may be designated. First, it must have "relevance," meaning it possesses "a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard." 43 C.F.R. § 1610.7-2(a)(l). Second, it must also have "importance," meaning the relevant values identified in the first step must have "substantial significance and values." 43 C.F.R. § 1610.7-2(a)(2); see also BLM Manual 1613, Section 1 l.B. For the relevance values to meet the "importance" threshold, the area must have "more than locally significant qualities ... compared to any similar resource," have qualities that make it fragile, rare, or irreplaceable, or been recognized as warranting protection to satisfy national priority concerns. BLM Manual 1613, Section 11.B.1. Third, the nominated area must require "special management" "to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish, wildlife, and plant resources, or other natural system or processes." 43 U.S.C. § 1702(a).

Certainly, ACECs can play a role in conservation and special management of historic, cultural, scenic, fish and wildlife resources. However, the BLM has not demonstrated how the addition of the proposed ACECs under Alternative 3 of the DEIS will improve Greater Sage-grouse populations and habitat more effectively than Priority Habitat Management Areas (PHMAs). Under Alternative 3, the DEIS states that the ACECs would be managed similarly to PHMAs, without additional management prescriptions. Big Horn County strongly feels that the designation of ACECs under Alternative 3 are unnecessary given that they will be managed exactly the same as PHMAs. The BLM fails to consider how GrSG populations and habitat are already protected under existing management actions and will be further protected by the proposed management actions under Alternatives 3 of the DEIS. A significant example of this failure is the BLM's attempt to layer ACEC designations on top of existing ACECs like in Fremont and Sublette Counties.

Furthermore, ACEC designations could allow for excessive regulatory authority in the future for areas that are otherwise considered appropriate for PHMA management. Unnecessary designation opens the door for further impediments to multiple use practices.

Big Horn County strongly opposes the designation of any Sage-grouse ACECs in Wyoming. As discussed earlier in these comments, we have worked diligently as a state to develop a framework that effectively manages for GrSG populations and its habitat and no new ACEC designations are warranted nor will they provide any additional protections not already in place.

XI. Fluid Mineral Development and Leasing Objective

Likely the most substantial direct impact to local government revenue in Wyoming is the management prescription for oil and gas development. Consequently, it is vital to correctly capture existing development and the Reasonably Foreseeable Development Scenario (RFDs). The RFD is even more important to get correct when it is comparing the potential impacts from wildly inconsistent alternatives. If poor or incorrect data is utilized to develop the RFD, then the RFD and resulting socioeconomic analysis will be flawed.

Certain portions of the BLM's description and analysis of existing oil and gas could be improved. For example, on 12-38 the BLM reports 9,127 wells have been "drilled" in Wyoming between 2013 and 2023. However, this figure includes workovers and wells that were never completed, which may capture wells that were never actually "drilled." The section properly includes data from the Wyoming Oil and Gas Conservation Commission, which reflects a total of 6,455 unique well spuds in Wyoming between 2013 and 2023. However, the fact that the state's number is 30% less than the BLM's number reflects a poor attempt to gather and clean-up the data for analysis.

On page 12-39, the DRMPA states that 24% of the HMAs in Wyoming are under an existing authorized lease. Additional data that should have been reflected in the DRMPA and clarified in this section is the number of leased acreage currently under litigation in Wyoming. Without including litigated leases in Table 35, it is misleading to members of the public that equate "authorized" as available for development.

In order to understand whether the RFD is truly reasonable there should be a greater description of what was utilized for inputs and variables. Table 35 in Appendix 12 would benefit from a better description of the "source" of the data provided in the table. In addition, there needs to be additional description of the table to help clarify whether these projected wells are federal surface and minerals, private/state surface and federal minerals, or mixed minerals and surface, etc.

The "Projected Production by Alternative in the Decision Area" needs to be amended to more accurately reflect the decline curves associated with modern horizontal development in Wyoming. Without any written description or justification, the projection utilizes a record production year in Wyoming as its basis for production over the next 20 years. In other words, the current projections do not consider decline curves of existing and new wells but keep historic production levels constant. However, it must be noted that the only way to maintain that statewide production level as production declines from existing wells is to drill and produce new wells.

The problem with maintaining existing production as a constant in the RFD is that it artificially reduces the negative economic impacts associated with alternatives 3 and 4 reduced projected well development. This is because the weight given to new wells is significantly reduced by the artificial base production of the existing wells.

Under Alternative 3 only 4,284 wells are expected to be drilled in the next 20 years. This is compared to Alternative 1 that projects 14,450 wells drilled in the same period of time. Although alternative 3 projects over 10,000 less wells are drilled in 20 years it only reduces the production of oil by roughly 224,000,000 barrels and gas by 4,600,000,000 mcf of gas.

Taxes derived from oil and gas development in Wyoming constitutes a significant portion of state and county revenue used to pay for public education and essential services, including roads, fire protection, emergency medical services, courthouses, libraries, landfills, hospitals, law enforcement, airports, recreation, and senior citizen centers.

Oil and gas companies operating in Wyoming are assessed property (ad valorem) taxes by counties and severance taxes by the state. Although they are called "taxes" both are more akin to a royalty because production is taxed regardless of whether an operator makes a profit. Property taxes on oil and gas vary by county and range from 6-7.3% calculated by the gross revenue of the previous year's production and the value of tangible equipment and improvements. Severance taxes are calculated at 6% of gross revenue in the same manner as royalty taxes (gross revenue minus transportation and gas processing cost). Federal Royalties are also deducted from the gross revenue for the purpose of calculating severance taxes.

Property taxes on oil and gas account for over 40% of the total property taxes levied by counties in Wyoming. In 2020, the property taxes collected by counties exceeded $600 million. Additionally, severance taxes collected by the state in 2022 topped $275 million. When adding in federal lease revenues, federal and state royalties, sale and use taxes, and conservation taxes, the industry contributed $1.23 billion in taxes to state and local governments.

As noted on the Petroleum Association of Wyoming (PAW) website, Wyoming ranked 8th in production of both crude oil and natural gas in 2022 nationally. Further, Wyoming ranked the 2nd largest producer of both oil and natural gas on federal lands, making the state disproportionally affected by national policy changes. According to a 2023 study released by the American Petroleum Institute, in 2021 the oil and natural gas had the following impacts on the Wyoming economy: 58,780 total jobs and $5.7 Billion in labor income.

Funding derived from mineral development constitutes a significant portion of State and County revenue used to pay for essential services, including roads, fire protection, courthouses and judicial systems, libraries, landfills, hospitals, law enforcement, airports, recreation, public health, and senior citizen centers. Any curtailment of leasing and development activity significantly impacts the socio-economics of the communities and eliminates a critical funding stream for not just our County but all counties, the State of Wyoming and its residents.

Our ability to fund organizations would be negatively affected, which includes but is not limited to, the following: WY Child and Family Development, Children's Advocacy Project (forensic interviewing of sexually assaulted and abused children), Human Resource Council, 'Youth Development Services (Youth Crisis and Intervention Center)', Humane Society, Boys and Girls Clubs, County Fair Boards, Hope Center (Domestic Violence and Sexual Assault Survivors Crisis Center and Shelter), local Libraries, Behavioral and Mental Health Crisis and Intervention Centers, Economic Development organizations and various youth and community recreation organizations. Without County support these organizations will offer fewer public services and could fail and there would be insufficient funds to provide basic services at a level needed for the protection of the county resident's health, safety, and security.

It cannot be stated enough the importance that the oil and gas industry plays in Wyoming. BLM must do all it can to find a balance between GrSG species and habitat protection with continued mineral leasing and development. This balance must be made in consideration of the interwoven land ownership patterns across Wyoming.

XII. Transportation and Transmission Objectives

Public access to routes of travel is essential to the County's transportation and public access systems and to the economic, social, political well-being, customs and culture of the communities. Many private landowners need rights-of-way across state and federal lands to access their property, to use their water rights, and to exercise their grazing rights. Rights-of-ways (ROW) and corridors provide for the development of certain types of infrastructure or facilities that are in the public interest on federal lands for a specified period of time.

Regarding approved access for transportation or transmission within PHMA, the County will support the Wyoming EO and the surface disturbance DDCT process for determining access. However, we strongly encourage BLM and the state to coordinate and consult with the affected County regarding any planning process or activity that restricts, eliminates, increases, or decreases access to federal or state lands and allow the County the opportunity to resolve any potential conflicts with the County's objectives, principles, and policies, prior to acting.

XIII. Socioeconomics

Economic impacts do matter. Access to federally administered lands and resources are critical to ensure the socioeconomic well-being, custom, culture and stability of our communities. In Big Horn County, lands under federal or state control and decisions made for public land management can directly impact the service and non-service industries, public accessibility, and the demographics of an area. Effective coordination and consultation between the County, federal and state agencies is critical to ensuring that land management agencies thoroughly consider the effects that proposed actions have on custom, culture, and economic stability; conservation and use of the environment and natural resources in the County along with multiple use. Counties receive revenue from federal lands in many ways including mineral leasing and development, agriculture,

recreation, travel and tourism, etc. Any curtailment of access to public lands will directly impact the socioeconomics of the County. We have attached our most recent Socio Economic study conducted by the University of Wyoming for your consultation and review.

The County cannot state clearly enough the importance of our ability to access federal lands to drive vibrant economic communities. BLM significantly undervalued the mineral contributions to the counties and state in the socioeconomic section. BLM must include a robust socioeconomic analysis clearly demonstrating the differences between management prescriptions in the Alternatives, which includes impacts to the tax base (royalties, rents or bonus bids, severance taxes, ad valorum taxes, sales and use tax employment income, and direct and indirect employment.) The County can assist in providing the most up-to-date information available for BLMs analysis.

In conclusion, Big Horn County is committed to continuing our engagement as a cooperating agency along with the State of Wyoming, its state agencies and BLM to work through these important issues. We encourage BLM to align with the most recent Wyoming EO, include acknowledgement and analysis of the Wyoming State Alternative and to develop a preferred alternative that takes into consideration our comments submitted herein.

Respectfully,

Bruce Jolley, Big Horn Commissioner

CC: The Honorable Governor Mark Gordon
The Honorable United States Senator John Barrasso
The Honorable United States Senator Cynthia Lummis
The Honorable United States Congressman Harriet Hageman

June 13, 2024

US Department of the Interior
Tracy Stone-Manning, BLM Director
1849 C St. NW, Room 5646
Washington, DC 20240
DOI-BLM-WO-2300-2022-0001-RMP-EIS

RE: Draft Resource Management Plan Amendment and EIS. Greater Sage Grouse March 2024
Comment submitted electronically via BLM E-planning website.

Director Stone-Manning,

Moffat County appreciates the opportunity to comment on the March 2024 Draft EIS Greater Sage Grouse RMP Amendment. Moffat County has been a consistent and active participant on sage grouse issues for the last 24+ years. Most recently, we have been a Cooperating Agency in almost all aspects of the 2015 grouse plan, 2019 grouse plan, and this 11-state grouse plan. Moffat County has supplied several comments, on this plan as it has been developed, therefore, Moffat County will focuses these comments on recent additions and unresolved issues between earlier versions and this DEIS.

TAWS Comments: Pages 2-120 through 2-128 and Table 2-15 outline the Adaptive Management approach and implementation of the Targeted Annual Warning System (TAWS). Up until the Draft EIS was published, the TAWS process has been discussed with Cooperating Agencies as "advisory", however, the way it is described in Table 2-15, it is clearly regulatory, and clearly shifts power for wildlife decisions from CPW to the Causal Factor Analysis (CFA) Team. For instance, page 2-126 discusses permits or leases considered for extension will be moved from 10 yr renewals to shorter terms. The problem lies in that these 10yr permit decisions are being made based off a non-proven TAWS model that hasn't been used or verified accurate before, yet this EIS institutionalizes a new trigger process. Moffat County is deeply concerned that BLM has now taken on a wildlife management role through the Causal Factor Analysis Team. The CFA Team does not even include local county and Cooperating Agency expertise. Counties in Colorado have been the lead partners along side of CPW throughout the development of the 2015 plan, 2019 plan, and this 11-state plan. In addition Garfield County has hired published PHD biologists and researchers who are amply qualified to sit on a CFA Team yet are included only if

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considered a "*subject matter expert, and other affected party*". Cooperating Agency representatives should be considered part of the CFA Team. Most important, is that the CFA team and will be making management decisions from grouse models, a responsibility which should lie with the Colorado Parks and Wildlife. Colorado Parks and Wildlife has the population data, and understands the behavioral patterns of grouse populations. This gives CPW the ability to ground truth and use multiple data points to verify the TAWS modeling. However, a new "wildlife expert", the CFA team is now able to hold decision making power regarding BLM permits. This mixes the role of a state wildlife agency with those of rangeland biologists and permitting agents of BLM.

There is no mention or evidence BLM has the funding or budget to manage a TAWS process, let alone the processing of data and adaptive ability to manage from TAWS outputs. Although Moffat County supports additional grouse data and modeling on a voluntary basis, it is inappropriate to make decisions off unproven, and moderately reliable TAWS results. Moffat County is opposed to this last-minute shift of the TAWS model being changed from advisory, to a regulatory tool. Clearly additional coordination and cooperation with the Cooperating Agencies is necessary before the EIS is final. In addition, Table 2-15 describes Alternative 3 and 4 are reliant upon population trend thresholds evaluated under the TAWS results. Soft and Hard population threshold trends have direct impacts on land management. There is much confusion over what actually determines the TAWS results and the role of the CFA Team. Coates et. al. is referenced to explain Climate Clusters and Neighbor Clusters, but no detailed description exists in this EIS, and we are unclear how BLM is utilizing these terms be used for comparison for population trends. We are also unclear how exemptions/exceptions to disturbance cap is requested in Neighborhood Clusters. We question the science that cluster comparisons are an accurate depiction of population trends.

Grazing: Moffat County commented during the Administrative Draft EIS the document had a negative connotation toward livestock grazing. While Moffat County appreciates the language in Appendix 15, RM-1 of "*well-managed livestock operations are compatible*" with sage grouse, we don't see the tone of livestock grazing changed between the admin draft and the draft EIS. Colorado Department of Agriculture submitted several pages of rational why livestock grazing is beneficial to rangelands, under all BLM's alternatives. They even cited scientific studies defending their statements. This EIS utilizes the term "improper grazing" over 20 times yet the term "well-managed grazing" is found two times in the entire EIS. Moffat County continues to request a recognition by BLM about how BLM doesn't regularly have examples of improper grazing, and that range health standards, EIS's, and activity level planning assure most BLM grazing is consistent with grouse management.

Stubble Height: Moffat County has repeatedly commented on the inappropriate use of stubble height as a decision-making standard for BLM to manage grazing. Standards of 4-6 inches, 7 inches, etc. are prescriptive and do not account for drought, soil conditions, etc. and should be acknowledged as one piece of data, but not sole decision-making criteria in rangeland management. Page 15-19 Vol. 3, Colorado "4. Intensity of use (utilization or stubble height objectives), 2-CO-13 4 all should properly reference stubble height as one of many tools, and not a singular decision making tool.

11 State vs Individual EIS's. Moffat County and all of the Cooperating Agencies in Colorado have consistently advocated AGAINST a one-size-fits-all approach, and repeatedly requested 11 individual state EIS's rather than this single document that covers all 11-States. We have commented on differences between Colorado's plan "protecting every bird" vs other state's plans that do not protect certain populations of birds. In addition, Colorado has the strictest oil and gas regulation of any western state, and has topographic and isolated populations that are dissimilar to other states. Now, as this Draft EIS becomes available, we see the complexity, confusion, and general attempt to standardize many of the terms, definitions, actions, and stipulations that do not fit in Colorado. Although we appreciate the attempt to have Colorado-specific references in the plan, it is complicated with each of the other state's attempting the same thing. In addition, because of the volume of information that must be listed in this document to cover all 11 states, inadequate time was given to describe management actions in the alternatives for each state. Moffat County continues to encourage BLM to consider breaking this document into state-specific plans.

Disturbance Cap: Moffat County requests much needed clarification on the 3% disturbance cap and when Colorado Management Zones and Habitat Assessment Framework area boundaries are used in the denominator to calculate disturbance percentages. Page 2-32 "Disturbance Cap Denominator" describes HAF denominator calculations, but we do not see discussion regarding the denominator when Colorado Management Zones are the project area.

Renewable Energy Projects: Additionally, Moffat County has previously, and continue to, express our concerns around disturbance from renewable energy projects, and disturbance from fossil fuel projects are treated differently. For instance, Table 2-10, page 2-94 describes renewable projects "*co-located ...with existing disturbance, will result in no additional impacts to those already associated with the existing major infrastructure.*" However, in the case of fossil fuel development, each additional co-locate of a well, powerline, or facility, count toward a cumulative impact and regularly require additional or additive compensation and impact mitigation. We advocate renewable development should be treated the same when it comes to calculating impacts and mitigation requirements.

If you have questions regarding Moffat County's comments above, please contact Jeff Comstock, Moffat County Natural Resources Department, at the information listed below.

Sincerely,

Jeff Comstock
Moffat County Natural Resources Director

Moffat County Natural Resources Department
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Craig, CO 81625
(970) 8826-3400 Office
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June 12, 2024

BLM Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

RE: Greater Sage-Grouse Draft RMP Amendment & DEIS

Dear Sirs:

Please accept this correspondence as the vigorous support of the above Organizations for Alternative 1 of the Greater Sage Grouse Draft RMP Amendment and DEIS ("the Proposal"). The DEIS fails to provide even basic information necessary to make a meaningful comment and is often internally contradictory regarding the scope of analysis. After reviewing the Proposal, the Organizations are unable to answer basic generalized questions around the effort such as: "Why have previous management efforts been found unsuccessful so quickly?" Given the short time frame of this decision we must also ask how much of the previous management effort was even implemented. Additional foundational information addressing why the large scale revision of existing planning has been found necessary

simply are not meaningful addressed, which only confounds basic understanding of the Proposal.

Our Organizations have partnered with the BLM for decades and provide hundreds of millions of dollars annually to support sustainable recreational opportunities on federal and state public lands across the nation. While this is an important partnership for our interests, we must question the agency value on this relationship as recreational usage simply is not even analyzed in the Proposal. This is concerning as the Proposal asserts recreation access is not an issue to be analyzed but then every specific topic or issue addresses recreation. The Organizations vigorously assert that recreation in all forms must be recognized and analyzed in the Proposal as it is mentioned 216 times in the first volume of the EIS. This simply has not happened as the Proposal asserts that recreational issues are outside the scope of the Proposal and the EIS provides a mere 2 pages of generalized discussion of recreational impacts from the Proposal. The Organizations simply cannot reconcile these positions in the Proposal.

This failure is immense when the Proposal is viewed in isolation. The failure exponentially expands when various outside requirements addressing recreational access are included in the scope of review. Analysis of how to improve recreational access and detailed examination of the economic contributions of recreational opportunities is required by President Biden's Executive Orders such as 14008 and 14057. Again, the Proposal omits any analysis of possible changes in the economic contributions from recreational activity in the planning area despite these requirements. The failure of the Proposal to meaningfully address recreational impacts and economic contributions from recreation to local communities is expanded when the newly released BLM 21st Century Outdoor Recreation Blueprint. While the BLMs 21st Century Recreation plan makes sweeping assertions of engagement and partnerships, none of these goals are addressed in the Proposal, despite the Proposal addressing an immense percentage of the lands managed by the BLM.

1. Who we are.

Before addressing the Organizations specific concerns regarding the Proposal, we believe a brief summary of each Organization is needed. The Off-Road Business Association ("ORBA") is a national not-for-profit trade association of motorized off-road related businesses formed to promote and preserve off-road recreation in an environmentally responsible manner.

One Voice is a non-profit national association committed to promoting the rights of motorized enthusiasts and improving advocacy in keeping public and private lands open for responsible recreation through strong leadership, advocacy, and collaboration. One Voice provides a unified voice for motorized recreation through a national platform that represents the diverse off-highway vehicle (OHV) community.

The United Snowmobile Alliance ("USA") is a nationally recognized 501 (c)(3) dedicated to the preservation and promotion of environmentally responsible organized snowmobiling and the creation of safe and sustainable snowmobiling in the United States.

United Four-Wheel Drive Association ("U4WD") is an international organization whose mission is to protect, promote, and provide 4x4 opportunities world-wide.

The Specialty Equipment Market Association ("SEMA") is a non-profit trade association that represents over 7,000 mostly small businesses around the country that manufacture, distribute, and retail specialty parts and accessories for motor vehicles. The industry employs over 1 million Americans and produces performance, functional, restoration and styling-enhancement products for use on passenger cars, trucks, SUVs, and special interest collector vehicles. SEMA members market products that enable automotive and off-road enthusiasts to personalize the style and upgrade the performance of their motor vehicles, including everything from classic cars to four-wheel drive vehicles to dedicated race cars.

The Colorado Off-Highway Vehicle Coalition ("COHVCO") is a grassroots advocacy organization of approximately 2,500 members seeking to represent, assist, educate, and empower all OHV recreationists in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO is an environmental organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and recreational qualities for future generations.

The Trail Preservation Alliance (“TPA”) is an advocacy organization created to be a viable partner to public lands managers, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of motorized trail riding and multiple-use recreation. The TPA acts as an advocate for the sport and takes the necessary action to ensure that the USFS and BLM allocate a fair and equitable percentage of public lands access to diverse multiple-use trail recreational opportunities.

Colorado Snowmobile Association ("CSA") was founded in 1970 to unite winter motorized recreationists across the state to enjoy their passion. CSA has also become the voice of organized snowmobiling seeking to advance, promote and preserve the sport of snowmobiling through work with Federal and state land management agencies and local, state and federal legislators telling the truth about our sport.

The Colorado Off-Road Enterprise (“CORE”) is a motorized action group dedicated to keeping motorized trails open in Central Colorado and the region.

The Idaho Recreation Council (“IRC”) is a collaboration of Idaho recreation enthusiasts on the following activities: 4 x 4, Equestrian, Backcountry Aviators, Mountain Biking, Snowmobiles, Motorcycles, Rafts/Jet boats, ATV/UTV’s, RVers, Recreational Miners, and Rock Hounds. The Idaho Recreation Council is comprised of Idahoans from all parts of the state with a wide spectrum of recreation interest and love for the future of Idaho and a desire

to preserve recreation for future generations of Idahoans. If you believe access is important to your recreation please consider joining a club in your area.

The Idaho State Snowmobile Association (“ISSA”) is a Not for Profit Organization dedicated to preserving, protecting, and promoting snowmobiling in the great state of Idaho. Our members may come from every corner of the state, but they all share one thing in common: their love for snowmobiling.

Nevada Off Road Association (“NVORA”) is a non-profit Corporation created for and by offroad riders. NVORA was formed to specifically fill the void between the government managers and the rest of us who actively recreate in the Silver State. NVORA does this by maintaining a consistent, durable, and respected relationship with all stakeholders while facilitating a cooperative environment amongst our community.

Ride with Respect ("RwR") was founded in 2002 to conserve shared-use trails and their surroundings. RwR has educated visitors and performed over twenty-thousand hours of high-quality trail work on public lands. Over 750 individuals have contributed money or volunteered time to the organization. RwR and its contributors have spent several-hundred hours maintaining trails designated for motorized use in the planning area. We have promoted minimum-impact practices including the preservation of cultural sites given their nonrenewable nature and tremendous value to our nation, particularly to indigenous Americans.

Collectively, ORBA, U4Wd, One Voice, SEMA, TPA, CORE, CSA, IRC, ISSA, NVORA, RwR and COHVCO will be referred to as “The Organizations” for purposes of these comments.

2(a). Critical foundational information around the purpose and need for the Proposal is not provided.

The Organizations were active participants in previous landscape efforts around Sage Grouse management that led to significant management changes for the benefit of the Sage Grouse in 2015. It has also been our understanding that these previous management changes had significantly benefitted Sage Grouse populations and habitat was improving. After reviewing the Proposal, we are unable to identify the basis and need proposed for additional management changes for the Sage Grouse. Has the Sage Grouse population declined suddenly after these management changes? Is there a change in some other new environmental condition since the last management effort? We have reviewed the Proposal and been unable to identify significant new research on the Sage Grouse that has been released. Rather most of the Sage Grouse resources that are addressed predate the 2015 management decisions.

The Proposal provides the following summary of new Sage Grouse science that has been published and cites two surveys of research as the basis for the assertion of new data as follows:

> "1.2.3 New GRSG Science
> The GRSG planning processes have consistently been based on and informed by science. Since the 2015 and 2019 planning efforts, hundreds of peer-reviewed scientific publications on GRSG and management of their habitats have been published. Many of the BLM's state and federal partners are significant contributors to this new science, and much of it is based on the data collected by state wildlife agencies. Some of these new publications are consistent with science that the BLM previously considered while others identify information not previously available. Several provide new spatial information on important population and habitat parameters for GRSG. The USGS has also compiled and summarized peer-reviewed journal articles, data products, and formal technical reports related to GRSG since January

> 2015 (Carter et. al., 2020, Teige, et. al., 2023). The BLM considers this new information and relevant science from our previous in developing and analyzing proposed management on BLM administered lands."[1]

The Organizations had the opportunity to review these reports and would question the accuracy of the summary provided in the Proposal. These are merely periodic surveys of possible publications on Sage Grouse from a variety of sources. The Carter work only cites 15 documents in total, and 11 of these documents (75%) are other DOI documents that are references to BLM and DOI decisions on site specific planning that is implementing the 2015 management decision on Sage Grouse. An example of this would be the USFWS findings made regarding the 2015 petition to possibly list the Sage Grouse. The Carter survey also references materials that are simply unrelated to any decision addressing the effectiveness of the 2015 management decisions such as:

> Fundamental Science Practices Advisory Committee, 2011, U.S. Geological Survey Fundamental Science Practices: U.S. Geological Survey Circular 1367[2]

> U.S. Department of the Interior, 2017, Report in response to secretarial order 3353: U.S. Department of the Interior, 15 p., accessed December 19, 2017[3]

We question how an outline of the implementation status of the 2015 management decision supports any conclusion that the 2015 planning effort needs to be reopened. This report shows the 2015 decisions have not been implemented on a large scale, which would support the decision to continue implementing the 2015 decisions rather than a significant change in management direction. We are unable to identify any work that is addressing new information or factors that might be impacting the sage grouse or even addresses the effectiveness of the 2015 standards.

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[1] *See*, Proposal at pg. 1-4.
[2] *See*, Carter pg. 10.
[3] *See*, Carter pg 11.

After a review of the Tiege work, the Organizations are forced to reach the similar conclusions regarding the need to reopen Sage Grouse planning as the Teige work references 30 documents on a wide range of issues. 10 publications are citing other BLM decisions or surveys which are implementing the 2015 management decisions , or 8 of which are addressing data obtained prior to implementing the 2015 standards. The survey further provides analysis of issues absolutely unrelated to a determination on the effectiveness of the 2015 Sage Grouse Management decisions such as the following citations:

> Kleist, N.J., Willems, J.S., Bencin, H.L., Foster, A.C., McCall, L.E., Meineke, J.K., Poor, E.E., and Carter, S.K., 2022, Annotated bibliography of scientific research on pygmy rabbits published from 1990 to 2020: U.S. Geological Survey Open-File Report 2022–1003, 75 p., accessed August 22, 2022,[4]
>
> Ooms, J., 2018, cld2—Google's Compact Language Detector 2, R package (ver. 1.2): R Project for Statistical Computing software release, accessed September 15, 2020, at https://cran.r- project.org/ web/ packages/ cld2/ index.html.[5]
>
> Ooms, J., 2020, cld3—Google's Compact Language Detector 3, R package (ver. 1.3): R Project for Statistical Computing software release, accessed January 5, 2021, at https://CRAN.R- project.org/ package= cld3.[6]
>
> Westgate, M.J., 2019, revtools—An R package to support article screening for evidence synthesis: Research Synthesis Methods, v. 10, no. 4, p. 606–614, accessed February 11, 2021,[7]

[4] *See,* Teige pg. 10.
[5] *See*, Teige pg.11.
[6] *See,* Teige pg. 11.
[7] *See,* Teige pg. 11.

The Proposal makes generalized assertions of the need for new planning based on publications of information around the Greater Sage Grouse that have occurred since the 2015 efforts. These generalized assertions are not supported by the information provided in any manner as many of these publications are referencing data obtain before the 2015 management changes or are addressing other species or are on items unrelated to management of any species at all. While the authority on the various database protocols and evidence screening methodology may be relevant to the survey process and may be relevant or interesting to Sage Grouse researchers, we are unable to indemnify any legal basis to reopen planning based on generalized research being published. This type of publishing happens all the time on many issues with no response at all from planners. Why would these publications be treated any different?

As further detailed later in these comments, publication of economic analysis around recreational economic contributions on BLM lands has skyrocketed in the last decade and this is simply omitted from analysis. The annual Department of Commerce works would be an example of the large amounts of new information being published on this issue as this information was only in its infancy when the final Sage Grouse management decisions were previously made in 2015. Clearly the mere publication of information is not the threshold.

2b. The Proposal asserts management threshold triggers were exceeded but provides no explanation of how this determination was made.

The Proposal simply asserts that 16 monitoring triggers have been exceeded in the previous Sage Grouse planning documents, but provides no meaningful discussion of what these management threshold triggers were or what factors might have caused the management threshold trigger levels to be exceeded. In a perplexing development at other points in the Proposal, it is asserted that 42 monitoring triggers were exceeded.[8] How can there be such

[8] *See*, Proposal at pg. 1-3.

a range of management threshold triggers being exceeded? Are the events causing the management threshold trigger to be exceeded natural events, such as fire or drought? Manmade events? Was there some new environmental factor that was only recognized since the last planning effort? How does a localized management threshold trigger point being exceeded relate to the landscape scale of planning? Was the particular management threshold trigger exceeded everywhere in the planning area? Were certain management threshold triggers exceeded in certain locations? If so, what management threshold triggers were exceeded in what locations for how long? Again, this is basic information that is critical to the process. These were also foundational decisions for the planning process that appear to have been entirely omitted from this effort. Without information such as this, how can the public confirm we are all addressing the same issues or that the planning effort even has a common starting point.

Even when there is information provided on what the management threshold trigger is that was exceeded the information is simply insufficient to answer basic questions. The Proposal makes a passing reference that wildfires may have contributed to management threshold triggers being exceeded as follows:

> "Sixteen adaptive management habitat triggers were tripped between 2015 – 2020, mostly the result of sagebrush loss to wildfires."[9]

This type of analysis immediately creates questions such as why would we reopen all planning due to localized impacts of wildfire? Why would issues like Sage Grouse habitat restoration not be addressed in post fire management efforts, like a burned area response ("BAER") effort? Had these areas been mitigated? It is beyond argument that wildfires are getting more severe and that in several years following the 2015 management revisions the Western United States has had bad fire years. Clearly the Proposal is not asserting that wildfires must reduce in scope and scale to avoid further management actions on Sage

[9] *See*, Proposal at pg. 1-3.

Grouse. Again, these are basic questions that must be addressed on the local level before making the decision to reopen a multi-state planning effort.

The inclusion of highly localized factors as the basis to reopen the previous landscape planning efforts still creates further questions about the purpose and need for the effort. What percentage of these areas was managed in compliance with range standards previously proposed? How much of the planning area had been subject to any implementation efforts at all? How was the timeframe between this planning effort and the close of previous planning efforts determined to be the appropriate timeframe to determine the success or failure of these management efforts?

This brings the Organizations to our first question on this Proposal. "What is the problem?" and secondly "How do we define success of any management effort?" We are unsure how to meaningfully address the Proposal without this type of information. We are also concerned that this unsupported decision-making process for the protection of species sets a VERY bad precedent that will undermine species protection efforts in the future. The Proposal appears to assert that since some portion of sage grouse habitat was impacted by wildfire and various publications about sage grouse were made, planning revisions are now needed. This is a terrible precedent for the basis of any planning as this basis could continue almost infinitely. Without the ability to define success and address the problem that is to be resolved, this will allow planning efforts to arbitrarily be reopened. This is exactly the situation that NEPA was put in place to avoid. The highly arbitrary basis for planning to be reopened will also be a barrier to implementation as managers will not want to implement any decision that could simply alter direction next year and be deprioritized or even found to be a threat to the species.

3. Recreation in all forms must be addressed in the Proposal or entirely removed from analysis.

The Organizations were simply shocked at the scale of conflicting guidance that is given in the Proposal regarding possible recreational concerns to the Sage Grouse populations and impacts to recreational access and usage that could result from Sage Grouse management decisions. The Proposal begins by asserting that Recreational access and travel management will be addressed as follows:

> **"ES.3.1 Issues Retained for Further Consideration in this RMPA/EIS**
> The following resource topics identified during public scoping are being carried forward for further analysis in this RMP Amendment/EIS.
> • Special status species (including GRSG)
> • Fish and wildlife
> • Air resources and climate
> • Soil resources
> • Water resources
> • Vegetation, including riparian areas and wetlands
> • Wild horses and burros
> • Cultural resources
> • Lands with wilderness characteristics
> • Wildland fire ecology
> • Livestock grazing
> • Recreation
> • Travel and transportation
> • Mineral resources
> • Lands and realty
> • Areas of Critical Environmental Concern (ACECs)
> • Tribal interests
> • Social and economic conditions, including environmental justice"[10]

Thie asserted scope of the Proposal on recreational and travel analysis was immediately contradicted in introductory provisions of the Proposal where the initial assertion that recreation and travel management was reversed as follows:

How should recreation and travel be managed to protect GRSG and sagebrush habitat?	Recommendations for recreation and travel management received during public scoping are either already in the existing RMP language from 2015 and 2019, or are not

[10] *See,* Proposal at pg. ES-3.

> RMP-level decisions (e.g., guidance on site-specific route designations, recommended route densities, limitations on dispersed recreation). Because such actions would be consistent with existing management or are not applicable at the RMP-level, no changes in RMP management actions need to be considered. [11]

The Proposals assertion that recreation and travel management are outside the scoped of analysis simply does not align with the analysis in the Proposal, as in the first volume of the EIS alone recreational usage is addressed 216 times. These two situations simply cannot be reconciled. If the desire is to avoid impacts to recreational access in the Proposal, this analysis and conclusion must be far more directly and clearly stated. If the Proposal is addressing recreation and travel management, as is evidenced by the 216 references to recreation in the first volume of the EIS, the Proposal needs to do this in a manner that complies with NEPA. This simply has not occurred either as the recreational and travel management portions of the Proposal span a mere two pages and no economic analysis for recreation is even mentioned.

Even if the exclusion of recreation and travel management from the Proposal analysis noted above is asserted to be precise, the summary of BLM planning efforts simply fails to reflect the diversity of BLM plans and age on the landscape. This decision also leaves an immense ambiguity in the possible protection of recreational access simply based on the limited date range of BLM RMP that are reviewed for recreational standards. While the Proposal starts analysis from 2015, we are aware of many RMP in various habitat areas that are FAR older than 2015. As an example, the Big Desert BLM planning area in Idaho is still operating on a management framework plan approved in 1981. As a result, we are unable to identify the

[11] *See*, Proposal at pg. 1-10.

relationship of this effort to those areas. This type of ambiguity is simply insufficient to comply with NEPA requirements.

The Proposal failure to meaningfully address recreation, despite the fact it is mentioned 216 times in the first volume of the EIS alone, is problematic. The current determination that recreational access is outside the scope of the Proposal is simply never explained or reconciled to the fact recreational issues are raised throughout the Proposal when addressing specific concerns. While no analysis of possible recreational impacts and travel management decisions are provided in the two pages of analysis provided[12], these types of concerns are woven throughout the Proposal. Again, this is an immense problem as many standards directly reference recreation and possible relationships of recreation and sage grouse. This is simply insufficient to support any assertion of NEPA sufficiency.

4. Executive Orders issued by President Biden specifically requiring economic analysis of agency actions and expansion of recreational opportunities have not been addressed in the Proposal.

The Organizations are vigorously opposed to the Proposal assertion that recreation and travel are outside the scope of analysis of the Proposal, which simply cannot be reconciled with the analysis provided. This assertion will not protect recreational access but rather compound impacts as no analysis of possible impacts of management decisions has been provided. Rather this failure to provide meaningful guidance will result in steps being taken to restrict recreation for almost any possible basis in future site specific planning with the mere assertion it is benefitting Sage Grouse. There will simply be nothing to rebut this assertion in the Plan. Our concerns around the systemic failure to address recreational values for landscapes is further compounded when the various protections and analysis required by several Executive Orders from President Biden are reviewed. The Organizations would note that Executive Orders("EO")

[12] *See,* Proposal §3.19 & 3.20

14008 and 14057 simply are not referenced in the Proposal despite these Executive Orders being issued by President Biden.

The Proposal provides no meaningful discussion of how compliance with various standards in Eos was determined and this is in stark contrast to the analysis required for these Executive Orders as they mirror many of the sentiments raised in the Proclamation. A full review and analysis of the various components of EO 14008 is critical to bringing balance to public lands and the Proposal is critical as there are three times recreational access and economic benefits of recreation are identified for improvement is specified in EO 14008.

§214 of EO 14008 clearly mandates improved recreational access to public lands through management as follows:

> "It is the policy of my Administration to put a new generation of Americans to work conserving our public lands and waters. The Federal Government must protect America's natural treasures, increase reforestation, ***improve access to recreation***, and increase resilience to wildfires and storms, while creating well-paying union jobs for more Americans, including more opportunities for women and people of color in occupations where they are underrepresented."[13]

The clear and concise mandate of the EO to improve recreational access to public lands is again repeated in §215 of the EO as follows:

> "The initiative shall aim to conserve and restore public lands and waters, bolster community resilience, increase reforestation, increase carbon sequestration in the agricultural sector, protect biodiversity***, improve access to recreation***, and address the changing climate." [14]

[13] *See*, President Joe Biden, Executive Order 14008; 86 Fed Reg 7619 At pg. 7626 (2021)
[14] *See,* EO 14008 at pg. 7627.

§217 of EO 14008 also clearly requires improvement of economic contributions from recreation on public lands as follows:

> "Plugging leaks in oil and gas wells and reclaiming abandoned mine land can create well-paying union jobs in coal, oil, and gas communities while restoring natural assets, ***revitalizing recreation economies***, and curbing methane emissions." [15]

Our position is the Proposal violates the mandate of 14008 to address recreational access and economic benefits of recreation to local communities. This must be corrected and addressed in the Proposal with required analysis and protections for recreational access. The Proposals' complete failure to address similar Executive Orders is not limited to a failure to address compliance with EO 14008 but extend to EO 14057 issued by President Biden on December 13, 2021. The immediate concern over the failure to address Executive Order 14057 is again apparent when EO 14057 is actually reviewed. EO 14057 starts with this general statement of purpose:

> "In responding to this crisis, we have a once-in-a-generation economic opportunity to create and sustain jobs, including well-paying union jobs; support a just transition to a more sustainable economy for American workers; strengthen America's communities;"[16]

EO 14057 has repeated and specific requirements to address economic contributions and impacts from agency actions as follows:

> "c) reform agency policies and funding programs that are maladaptive to climate change and increase the vulnerability of communities, natural or built systems, economic sectors, and natural resources to climate impacts, or related risks; and" [17]

[15] *See,* EO 14008 at pg. 7628
[16] *See,* President Joseph Biden; Executive Order 14057; 86 Fed Reg. 70935(2021).
[17] *See*, EO 14057 at pg. 70938.

EO 14057 specifically addresses the need for incorporation of economic contribution in agency actions to create or improve sustainability of both the agency actions and management decisions. Again, the Organizations are unable to identify any attempt to outline how these requirements were complied with in the development of the Proposal as there is no discussion of how the asserted compliance was determined.

5(a). Economic analysis is identified as an important characteristic in NEPA analysis.

It is well established that economic impacts and contributions from all multiple uses are an important factor required to be addressed in the NEPA process. Despite this legal requirement of NEPA analysis being of heightened importance for recreational activities in several Executive Orders, the Proposal falls woefully short of a legally sufficient legal analysis of this issue and well short of the analysis of an issue identified as an important sector of the planning area community.

Economic contribution calculations are often complex and involve a balance of numerous factors that directly impact the spending habits of those sought to be studied, and often involve far more analysis and discussion than planning for other issues. The basic complexity of any economic determinations and the size of the calculations to be made are summarized by the Western Governors Association's recreational economic contributions study as follows:

> "How is "economic impact" calculated? Many people might think of a consumer buying equipment – a tent, fishing pole, ATV, bicycle, boat, snowboard or rifle. However, the impact is much more complex than the manufacture and sale of gear and vehicles. Gas stations, restaurants, hotels, river guides and ski resorts benefit from outdoor recreation. In total,

equipment and travel expenditures represent billions in direct sales that create jobs, income, tax revenues and other economic benefits."[18]

The complexity of the calculations undertaken for economic impact calculations is immediately evidenced by the sheer number of pages required in most economic impact reports, as the explanation of the analysis process used to arrive at any final figure of any economic contribution analysis is often as valuable as the total economic contribution that is reached. Given the complexity of the process, we must question how the decision was made to provide no economic analysis of contributions from recreation and how these could be impacted by additional management restrictions was made in the Proposal.

5(b) Proper integration of economic information in the planning process is an ongoing issue in federal planning.

The proper integration of accurate economic information is often a weakness of the public land planning process in the Western United States, which has resulted in the creation of many other longer-term problems when decisions reflecting an imbalanced multiple uses are implemented. The Organizations submit that the failure of many planning efforts to accurately address economic impacts and contributions was a concern addressed around the development of previous Sage Grouse planning efforts. The Western Governors Association released its *Get Out West* report in conjunction with its economic impact study of recreation on public lands in the Western United States which specifically identified that proper valuation is a significant management concern as follows:

"Several managers stated that one of the biggest challenges they face is "the undervaluation of outdoor recreation" relative to other land uses."[19]

[18] *See* Western Governors Association report; *A snapshot of the Economic Impact of Outdoor Recreation;* prepared by Southwick and Associates; July 2012 at pg. 1.
[19] See, Western Governors Association; *Get out West Report; Managing the Regions Recreational Assets*; June 2012 at pg.. 3.

The *Get Out West* report from the Western Governors' Association also highlighted how critical proper valuation of recreation is to the development of good management plans based on multiple use principals. The *Get Out West* report specifically found:

> "Good planning not only results in better recreation opportunities, it also helps address and avoid major management challenges – such as limited funding, changing recreation types, user conflicts, and degradation of the assets. Managers with the most successfully managed recreation assets emphasized that they planned early and often. They assessed their opportunities and constraints, prioritized their assets, and defined visions."[20]

The Organizations believe our concerns regarding the Proposal and those expressed in the Western Governor's *Get Out West* report virtually mirror each other. This concern must be addressed prior to finalizing the Proposal in order to avoid increases to many other management issues that were sought to be minimized with the creation. There can simply be no factual argument made that recreation has not been significantly undervalued in the Proposal and this has directed the range of alternatives provided for multiple use recreation in the planning area.

5(c) Accurate analysis of economic impacts from planning is an exceptionally complex task to be addressed in every phase of planning.

As noted in the Western Governors' *Get Out West* report, public lands are a major economic driver for many Western communities that are often completely surrounded by large tracts of public lands. Usage of these public lands takes a variety of forms, but the largest user of public lands throughout the West is the recreational user. To ensure economic contributions of public lands to local communities and western states, relevant federal statutes and BLM

[20] See, *Get Out West Report* at pg. 5.

planning documents implementing these statutes explicitly require economics to be addressed in **every** stage of the planning process. The BLM handbook requires planners to document economic methods in two stages before the releasing draft alternatives. The Organizations believe these mandates simply have not been complied with in the development of the Proposal and will result in long term increases in user conflicts and degradation of assets and economic contributions, all of which are identified as priority concerns in several Executive Orders and NEPA.

The basic mandate to include documented economic analysis early in the interdisciplinary team process for public lands planning is provided by the Federal Lands Planning and Management Act ("FLPMA). FLPMA specifies the various criteria that must be incorporated at specific times in the development of a land use plan as follows:

> "(c) In the development and revision of land use plans, the Secretary shall–
>
> (2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;..." [21]

The basic mandate of FLPMA regarding the critical need for documented economic analysis is more specifically and extensively addressed in Appendix D of the BLM's Land Use Planning Handbook. Appendix D opens as follows:

> "A. The Planning Process
>
> To be effective, social scientific data and methods should be integrated into the entire planning process, from preparing the pre-plan to implementation and monitoring. The main social science activities for the various planning steps are outlined in Table D-1.
>
> Table D-1.—*Social science activities in land use planning* Social science activities

[21] 43 U.S.C. §1712

Planning steps	
Steps 1 & 2—Identify Issues and Develop Planning Criteria	▪ Identify publics and strategies to reach them ▪ Identify social and economic issues ▪ Identify social and economic planning criteria
Step 3—Inventory Data	▪ Identify inventory methods ▪ Collect necessary social and economic data
Steps 4—Analyze Management Situation	▪ Conduct social and economic assessment, including existing conditions and trends and the impacts of continuing current management ▪ Document assessment methods in an appendix or technical supplement
Step 5—Formulate Alternatives	▪ Identify social and economic opportunities and constraints to help formulate alternatives
Step 6—Estimate Effects of Alternatives	▪ Identify analysis methods ▪ Analyze the social and economic effects of the alternatives ▪ Document impact analysis methods in an appendix or technical supplement ▪ Assess mitigation opportunities to enhance alternatives' positive effects and minimize their negative effects

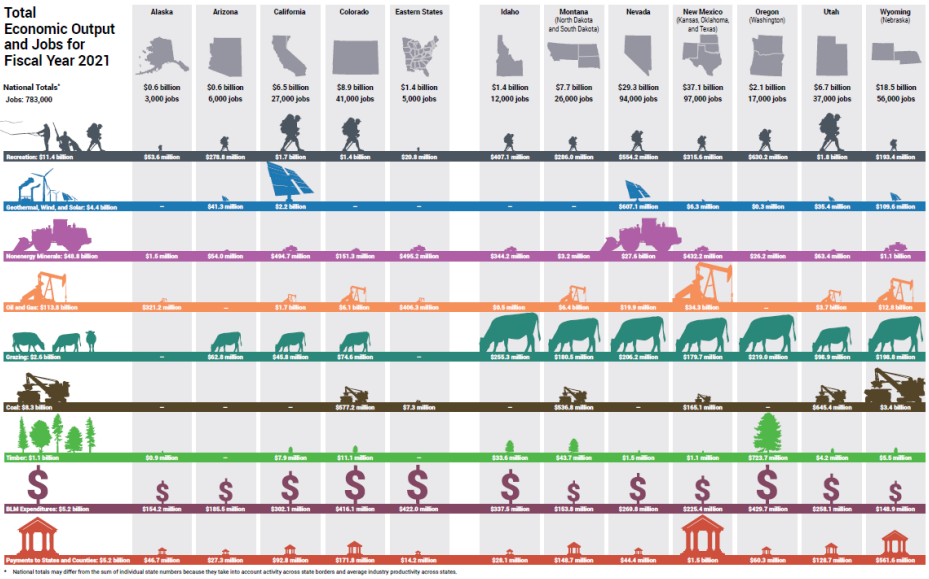
Steps 7 & 8—Identify Preferred Alternative and Finalize Plan	▪ Identify potential social and economic factors to help select the preferred alternative
Step 9—Monitor and Evaluate	▪ Track social and economic indicators"[22]

The Organizations must note that economic concerns are the only factor that is addressed in every step of the planning process laid out in the BLM planning handbook. Documentation of economic forecasts and analysis methodology is required in two separate stages before release of draft alternatives. The required documentation of these concerns is exactly the information the Organizations seek to review but cannot review in the Proposal as required as the information provided is simply not provided for recreation.

5(d) The Proposal fails to recognize the immense contributions of recreational activity in the planning area identified by other planning agencies.

The Proposal provides what appears to be a reasonable analysis of many activities that could be negatively impacted by the new management standards, making the Proposals silence on recreational impacts only that much more vivid. This silence is only compounded when the consistent recognition of the economic importance of recreational opportunities on BLM lands is addressed. For the last several years the BLM has provided their "BLM A sound investment for America" in 2022 brochure, which we believe is an important resource for managers and partners.[23] This brochure provides a highly detailed breakdown of the economic importance of recreation on BLM lands as recreation is the primary economic contributor to communities in almost every state BLM owns lands in, which is reflected in the following chart:

[22] *See*, BLM LUP Handbook H-1601-1 at Appendix D pg. 2. Emphasis added.
[23] A complete copy of this report is attached as Exhibit "1" of these comments.



The 2022 BLM Sound Investment analysis further provides the following summary of the economic importance of recreation to local communities as follows:

> **RECREATION:** More than 99 percent of BLM-managed lands are available for recreation at no fee to visitors. Lands used for recreational activities attract visitor spending and contribute significantly to local economies. In FY 2021, BLM-managed lands received more than 80 million recreation-related visits, an increase of about 10 percent over the previous year.[24]

The immediate conflict between these two positions being taken by the BLM cannot be overlooked.

The economic importance of recreation to western states was also recognized by the US Department of Commerce in the their annual Outdoor Recreation Satellite Account on the

[24] *See*, Sound investment strategy brochure at pg. 2.

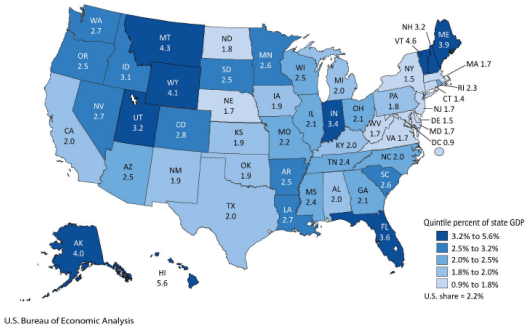
issue.[25] The summary highlights the immense percentage of GDP that recreation provides to western states as follows:

Outdoor Recreation Satellite Account, U.S. and States, 2022

New Statistics for 2022; Updates for 2017–2021

The U.S. Bureau of Economic Analysis (BEA) released statistics today measuring the outdoor recreation economy for the nation, all 50 states, and the District of Columbia. The new U.S. data show that the value added of the outdoor recreation economy accounted for 2.2 percent ($563.7 billion) of current-dollar gross domestic product (GDP) for the nation in 2022 (national table 1). At the state level, value added for outdoor recreation as a share of state GDP ranged from 5.6 percent in Hawaii to 1.4 percent in Connecticut. The share was 0.9 percent in the District of Columbia (state table 1).

State Outdoor Recreation Value Added as a Percent of State GDP, 2022



U.S. Bureau of Economic Analysis

The Department of Commerce also provides a highly detailed annual report and breakdown of the specific benefits to each state from outdoor recreation. A copy of this report is attached as Exhibit "3" to these comments. The USFS also has recognized the immense value of multiple use recreational opportunities on their lands in the most recent economic analysis conducted with their National Visitor Use Monitoring efforts. A copy of this report is attached as Exhibit "4" to these comments. The Colorado Off-Highway Vehicle Coalition has partnered for decades with the USFS, BLM and Colorado Parks and Wildlife to provide high quality economic data for motorized recreation in the state of Colorado. COHVCO recently updated this research and released a detailed analysis of these conclusions and process for use in planning. A copy of this work is attached as Exhibit "5" to these comments.

The Organizations are deeply concerned that the Proposal provides no guidance on how these proposed Alternatives could impact recreational economic contributions, despite numerous Executive Orders, NEPA requirements and high quality detailed information being provided from partner agencies on this issue. For this reason alone the Organizations are unable to support any Alternative other than Alternative A of the Proposal.

[25] A copy of the Dept of Commerce 2022 Naitonal Report on recreational activity is attached as Exhibit "3" to these comments.

6. The BLM Blueprint for 21st Century Outdoor Recreation strategy has simply been ignored in this effort.

The Organizations have been engaged in recent efforts of the BLM around their 21st Century Recreation Strategy, including attending public meetings in Las Vegas and Washington DC last year. Our efforts have also included numerous rounds of comments and meetings with a wide range of BLM staff. These have been significant efforts on our part that we have undertaken in good faith in an attempt to understand the challenges facing the BLM as a result of decades of budget cuts and staffing challenges. In these meetings and comments, we have voice significant concerns about the failure of various planning efforts to meaningfully integrate various efforts, which appear to the public, to be occurring largely in isolation from each other. We have been consistently informed that the new recreation strategy would start to address these types of concerns. After reviewing the Proposal, we are unable to identify any integration of various issue specific efforts into the larger vision reflected in the recreation Strategy.

Given the scale of the Proposal and of the 21st Century Recreation Blueprint, we would have expected this effort to be mentioned in the Proposal and meaningfully discussed as this would send a strong message to recreational partners such as ourselves that in many areas are now entirely providing all funding to the BLM for staffing and recreational projects. Rather than proactively identifying the relationship of the two efforts, the silence on this issue also sends a strong message and it is not positive about the value of these partnerships.

Our frustration with the failure to meaningfully address recreation in planning is compounded when the Executive Summary of the BLM's 21st Century Recreation Blueprint is reviewed. This Executive Summary provides as follows:

> "Executive Summary
>
> The Bureau of Land Management (BLM) is developing a "Blueprint for 21st Century Outdoor Recreation" (Blueprint) intended to guide investments, partnerships, outreach, and program development to respond to current demand and chart a course to meet future needs.

The Blueprint presents several major shifts in how the agency prioritizes and supports outdoor recreation. The BLM is committed to durable change, which means it must work closely with communities and partners to respond to varying recreation opportunities and pressures and seek continuous program improvements. Another principle of change is a shift from reactive recreation management to a proactive approach, enabling planning to consider sustainable resource management needs. Importantly, the Blueprint advances the "U.S. Department of the Interior Equity Action Plan" and builds on prior work through the "Connecting with Communities: BLM Recreation Strategy," offering a new path forward that promotes equitable access to outdoor recreation opportunities, while conserving, protecting, and enhancing BLM's one-of-a-kind resources and experiences.

As part of this Blueprint, BLM has established a new vision to proactively manage for exceptional and one-of-a-kind recreational experiences that invite all to share in the enjoyment and stewardship of their public lands and waters. The Blueprint vision includes four strategic pillars. Each pillar outlines desired outcomes, core strategies, and partnership success stories. The BLM believes these pillars will serve as the foundation for successful recreation management in the 21st century.

The Four Strategic Pillars are:

1. Grow and Diversify Resources for BLM Recreation
2. Prioritize and Embrace Partnerships
3. Expand Outreach and Establish a Culture of Inclusion
4. Meet the Demand, Protect Resources, and Improve Access"[26]

The overlap between the stated mission of this information and the information we are seeking in this Proposal cannot be overlooked. While the Proposal seeks to reopen Sage

[26] *See*, DOI , BLM *Blueprint for 21st Century Outdoor Recreation*; August 2023 at pg. 1.

Grouse management as some percentage of management triggers are exceeded and various publications on Sage Grouse were made, the 21st Century Recreation Blueprint has been ignored in both letter and spirit despite 100% of the goals being exceeded in the Proposal. Even more frustrating is the fact we are unable to identify a single step that has been taken in furtherance of these goals or a single planning effort where this document as been taken into account.

7. Conclusion.

The Organizations are forced to support Alternative 1 of the Proposal and vigorously oppose each of the other Alternatives. The DEIS fails to provide even basic information necessary to make a meaningful comment and is often internally contradictory regarding the scope of analysis. After reviewing the Proposal, the Organizations are unable to answer basic generalized questions around the effort such as: "Why have previous management efforts been found unsuccessful so quickly?" Given the short time frame of this decision we must also ask how much of the previous management effort was even implemented. Additional foundational information addressing why the large-scale revision of existing planning has been found necessary simply are not meaningful addressed, which only confounds basic understanding of the Proposal.

Our Organizations have partnered with the BLM for decades and provide hundreds of millions annually to support sustainable recreational opportunities on federal and state public lands across the nation. While this is an important partnership for our interests, recreational usage simply is not even analyzed in the Proposal. This is concerning as the Proposal asserts recreation access is not an issue to be analyzed but then every specific topic or issue addresses recreation. The Organizations vigorously assert that recreation in all forms must be recognized and analyzed in the Proposal as it is mentioned 216 times in the first volume of the EIS. This simply has not happened as the Proposal asserts that recreational issues are outside the scope of the Proposal and the EIS provides a mere 2 pages of generalized discussion of recreational impacts from the Proposal. The Organizations simply cannot reconcile these positions in the Proposal. Analysis of how to

improve recreational access and detailed examination of the economic contributions of recreational opportunities is required by President Biden's Executive Orders such as 14008 and 14057. Again, the Proposal omits any analysis of possible changes in the economic contributions from recreational activity in the planning area despite these requirements.

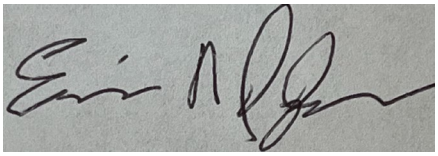
The failure of the Proposal to meaningfully address recreational impacts and economic contributions from recreation to local communities is expanded when the newly released BLM 21st Century Outdoor Recreation Blueprint. While the BLMs 21st Century Recreation plan makes sweeping assertions of engagement and partnerships, none of these goals are addressed in the Proposal, despite the Proposal addressing an immense percentage of the lands managed by the BLM.

The Organizations would welcome discussions on development of an Alternative that provided high quality recreational opportunities and protected other values as well. This type of alternative could be developed largely based on existing management. If you have questions, please feel free to contact Scott Jones, Esq. (518-281-5810 / scott.jones46@yahoo.com) or Fred Wiley (661-805-1393/ fwiley@orba.biz).

Respectfully Submitted,

Scott Jones, Esq.
COHVCO, USA
Authorized Representative

Fred Wiley
ORBA President and CEO



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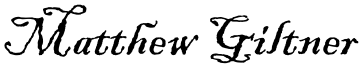

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June 12, 2024

SUBMITTED BY EMAIL: BLM_HQ_GRSG_Planning@blm.gov

ATTN: HQ GRSG RMPA
Bureau of Land Management
Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101

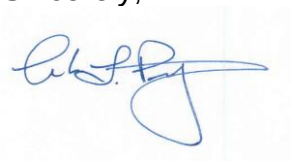
RE: J.R. Simplot Company Comments to Bureau of Land Management's Notice of Availability (NOA) of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning 89 Fed. Reg. 18963 (March 14, 2024)

Dear Ms. Deibert:

The attached are comments on behalf of the J.R. Simplot Company (Simplot) regarding the above referenced NOA. Simplot previously submitted comments on May 10, 2024, on the BLM proposal to incorporate Areas of Critical Environmental Concern (ACEC) specific to Greater Sage-Grouse (GRSG) under alternatives 3 and 6, in the 2024 Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement (DEIS). Because of the importance and significance of phosphate mining in Utah and Idaho, beginning in 2014, Simplot has provided a number of general and specific comments to the BLM and United States Forest Service efforts to amend land use plans for GRSG, including how the various alternatives specifically effect our business.

Simplot supports efforts to conserve the GRSG and is deeply committed to ensuring that the listing status of the GRSG under the Endangered Species Act remains "not warranted". Simplot appreciates the opportunity to provide additional comments for BLM's consideration when crafting potential alternatives and encourages the BLM to continue to build upon its commitment to on-the-ground management to promote conservation through close collaboration with State governments, local communities, private landowners, and other stakeholders.

Sincerely,



Alan L. Prouty
Vice President, Environmental & Regulatory Affairs

Enclosures

c: Lori Lusty, J.R. Simplot Company
Thomas Perry, J.R. Simplot Company
Wendy Fuell, J.R. Simplot Company
Ben Davenport, Idaho Mining Association
Katie Sweeny, National Mining Association
Jared Jackson, J.R. Simplot Company, Vernal Mine Manager
Brian Somers, Utah Mining Association

Comments on

Bureau of Land Management

03/14/2024 Notice of the Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning

J.R. Simplot Company

Boise, Idaho

June 12, 2024

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1. Introduction

1.A. Status

The greater sage-grouse (GRSG) was first considered for protection under the Endangered Species Act (ESA) in 2003. After reviewing the best available scientific and commercial information, the U.S. Fish and Wildlife Service (USFWS) concluded (in January 2005) that listing the GRSG was not warranted (70 Federal Register 2243). However, on February 26, 2008, the USFWS announced that the GRSG would receive an additional review to determine if the species warrants protection under the ESA. The USFWS stated that the new status review would take into consideration relevant information that had become available since 2005 (73 Federal Register 75176-75244).

The new status review conducted by the USFWS utilized, to a large extent, data from a population trend analysis conducted in 2008 by the Western Association of Fish and Wildlife Agencies (WAFWA). This population trend analysis incorporated an additional four years of data beyond the Connelly et al. (2004) analysis used during the initial USFWS status review. The WAFWA analysis found a long-term population decline between 1965 and 2007 (WAFWA 2008). Based in part on this new information, on March 23, 2010, the USFWS 12-month finding determined that listing the GRSG was warranted but precluded by higher priority species, thereby designating the bird as a candidate species under the ESA.

The USFWS based its review on the status of and threats to the GRSG in relation to the five listing factors provided in Section 4(a) (1) of the ESA. The USFWS determined that Factor A, “the present or threatened destruction, modification, or curtailment of the habitat or range of the GRSG,” and Factor D, “the inadequacy of existing regulatory mechanisms,” posed “a significant threat to the GRSG now and in the foreseeable future” (USFWS 2010). The USFWS identified the principal regulatory mechanisms for the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) as conservation measures in resource management plans (RMPs).

In 2011, the BLM supplemented its existing National Sage-Grouse Habitat Conservation Strategy by releasing the National Greater Sage-Grouse Planning Strategy (BLM 2011), as well as Instructional Memorandum (IM) 2012-044. The goal of the National Greater Sage-Grouse Planning Strategy and IM 2012-044 was to review existing regulatory mechanisms and to implement new or revised regulatory mechanisms through the land use planning process to conserve and restore the GRSG and its habitat.

In September 2015 the Record of Decision (ROD) and Approved Resource Management Plan Amendments (ARMPA’s) for the Great Basin Region GRSG Sub-Regions of Idaho and Southwestern Montana, Nevada and Northeastern California, Oregon, and Utah were released.

Subsequently, in September 2015 the USFWS issued its GRSG ESA finding that protection for the GRSG under the ESA was not warranted and withdrew the species from the Candidate Species list.

After the release of the 2015 ROD's and ARMPA's, the BLM filed an application for the withdrawal of approximately 10 million acres of public and National Forest system lands located within Sagebrush Focal Areas (SFAs) in Idaho, Montana, Nevada, Oregon, Utah, and Wyoming. On December 30, 2016, a Notice of Amended Proposed Withdrawal, Release of Draft Environmental Impact Statement (DEIS) for the Proposed SFA Withdrawal, and Notice of Public Meetings; Idaho, Montana, Nevada, Oregon, Utah, and Wyoming was published in the Federal Register. (81 FR 96478)

Based on significant changes in policy between the 2013 DEIS's and 2015 FEIS's, including the creation of SFAs, uniform lek buffers, and a range wide shift in mitigation policy, multiple lawsuits were filed in federal court challenging the RODs and ARMPAs. On March 31, 2017, the United States District Court for the District of Nevada held that the BLM violated the National Environmental Policy Act (NEPA) of 1969, as amended, by failing to prepare a supplemental Environmental Impact Statement (EIS) for the designation of SFAs in the Nevada and Northeastern California GRSG Resource Management Plan Amendment in Nevada. This was the same process the agencies used to designate over 10 million acres of sage-grouse habitat as SFA.

In order to comply with the order from the U.S. District Court, on October 11, 2017 the BLM issued a Notice of Intent (NOI) in the Federal Register of Cancellation of Withdrawal Application and Withdrawal Proposal and Notice of Termination of Environmental Impact Statement for the SFA withdrawal in Idaho, Montana, Nevada, Oregon, Utah and Wyoming and their intent to Amend Land Use Plans regarding GRSG conservation and prepare associated Environmental Impact Statements or Environmental Assessments. In addition to complying with the court's order, the purpose of the amendments was to address issues raised by various interested parties, including several Western states, which BLM considered in amending some, all or none of the BLM land use plans that were amended or revised in 2014 and 2015 regarding GRSG conservation in the states of California, Colorado, Idaho, Nevada, Oregon, Wyoming, North Dakota, South Dakota, Utah and Montana (''2015 Sage-Grouse Plans'').

On December 10, 2018, a Notice of Availability (NOA) was published in the Federal Register for the Utah and Idaho Proposed Resource Management Plan Amendment's and FEIS for a 30-day protest period and a 60-day Governor's Consistency Review. A ROD was issued in March of 2019.

The BLM received eight protest letters during the protest period. On October 16, 2019, the US District Court for the District of Idaho issued an order granting a motion for a preliminary injunction filed by Plaintiffs Western Watersheds Project, WildEarth

Guardians, Center for Biological Diversity, and Prairie Hills Audubon Society. The Court found that the Plaintiffs were likely to succeed on the merits of their claims that the BLM violated NEPA when adopting the 2019 Approved Resource Management Plan Amendments and issued an order that preliminarily enjoined the BLM from implementing the 2019 RODs but did not vacate the amendments or their RODs. Because the BLM was enjoined from implementing the decisions in the 2019 ROD's the actions contained in the 2015 RODs remained in effect.

In response to this injunction the BLM issued GRSG Draft Supplemental Environmental Impact Statements (DSEIS's) in February of 2020 and GRSG Final Supplemental Environmental Impact Statements (FSEIS's) in October and November of 2020. The BLM prepared these supplemental documents to review its previous NEPA analyses, clarify and augment it where necessary and provide the public with additional opportunities to review and comment. These reviews included an extensive effort to address recent science and information including the establishment of a team of biologists and land use planners to evaluate scientific literature provided to the agency. Notably, this effort included coordination with United States Geological Survey (USGS) in 2020 to review scientific literature presented during the DSEIS comment period. The USGS has continuously evaluated science published after 2018 and has maintained an annotated bibliography of scientific research on GRSG. The BLM relied upon USGS' annotated bibliography for their 2020 review.

In the 2020 FSEIS's, the BLM found GRSG science and other information had incrementally increased, but out of the 75 articles considered by the BLM as new science, USGS had already reviewed 67 articles. BLM biologists also summarized the remaining eight papers submitted by the public for validation. This additional knowledge was evaluated by the BLM but did not change the scope or direction of the BLM's GRSG management.

As stated on the cover of the FSEIS's, the publication of the FSEIS's was the result of three hard looks at NEPA including 2015, 2019, and 2020, completed at a total cost of $17.1 million dollars. Further, the process resulted in the identification of 143 alternatives, considered in 18 EIS's, based on the consideration of 16,862 substantive comments on DEISs.

Nevertheless, on February 11, 2021, the US District Court for the District of Idaho issued an order in response to Plaintiffs (Western Watershed Project), seeking partial summary judgement on the BLM's decision to cancel the withdrawal of 10 million acres of federal lands located in Idaho, Montana, Nevada, Oregon, Utah, and Wyoming, which had previously been identified as a SFA. The Court granted the Plaintiffs partial summary judgement for APA violation claims, vacated BLM's cancellation of the application of and proposal for the SFA withdrawal and remanded to the BLM for further proceedings.

After multiple attempts, beginning with the issuance of the 2015 ROD's and ARMPA's, the completion of a 2016 DEIS for the proposed SFA withdrawal, the issuance of 2019 ROD's and ARMPA's and the development of draft and FSEIS's in 2020, the BLM on November 22, 2021, once again issued a NOI to amend Land Use Plans regarding GRSG conservation and prepare associated EISs, again including the consideration of SFA's and ACEC's. The stated purpose and need of the effort in the 2021 NOI was as follows:

> *"The BLM's preliminary purpose is to amend the applicable land use plans to provide for land use decision's that respond to changed conditions related to GRSG land management and provide the BLM with* ***locally relevant decisions*** *(emphasis added) that accord with range wide GRSG conservation goals.*
>
> *"The BLM's preliminary need is to amend land use plans to address issues raised by various interested parties; consider recent developments in relevant science; advance implementation of the Department of the Interior's Climate Action plan and address continued GRSG and sagebrush loss and GRSG population declines"*

Although the 2021 NOI clarified that where existing planning decisions are still valid, those decisions may remain unchanged and incorporated into the amended land use plans; the BLM has already spent countless hours and an excess of $17 million dollars on GRSG management plans including the preparation and issuance of draft and FSEISs for GRSG as recently as 2020. These documents were completed for each state by the BLM to address specific deficiencies that were identified in the October 16, 2019, Decision Memorandum issued by United Sates District Court for the District of Idaho (Case No. 1:16-CV-83-BLW) and to determine whether additional planning was necessary and included a review of scientific literature regarding GRSG up to 2020 as previously noted.

Regarding the Utah and Idaho FSEIS's, both "Dear Reader" letters stated the following:

> *"After reviewing public comments and completing the new science evaluation, the BLM determined that the most recent scientific information relating to Greater Sage-Grouse is consistent with the BLM's environmental analysis supporting its 2019 Greater Sage-Grouse land use plan amendments.''*

The BLM concluded through this process that no further planning was necessary and the existing NEPA analyses supported the original 2019 RODs. RODs associated with those supplemental EISs were signed in January 2021 acknowledging this conclusion and made no further management decisions.

On March 15, 2024, a Notice of Availability (NOA) and comment period was published in the Federal Register for a GRSG Draft Resource Management Plan Amendment and Environmental Impact Statement (2024 Draft RMPA/DEIS) for Greater Sage-Grouse Range wide Planning. Because the 2019 RODs were enjoined, but not vacated, the

associated management actions are now being considered for amendment in this planning process as Alternative 2, (No Action Alternative).

1.B. General Statement of Interest

These comments are on behalf of the J.R. Simplot Company (Simplot). Simplot is a privately held agribusiness corporation based in Boise, Idaho. The corporation is engaged in a number of businesses including food processing, farming, mining of phosphate and silica, fertilizer manufacturing, beef cattle feedlots, ranching and other enterprises related to agriculture. Simplot has operations throughout the world and the United States. The majority of the operations in the United States are in the upper Midwest and West. Simplot's mission is to help feed the world through *Bringing Earth's Resources to Life.*

Simplot has significant interests in the management of federal lands in Utah, Idaho, Oregon and Nevada as we conduct grazing on federal lands, have mine support facilities on federal lands, hold federal phosphate leases on federally managed land, and operate an ore supply pipeline that crosses federal lands. In particular, the Utah, Idaho and Southwestern Wyoming phosphate mining and fertilizer manufacturing operations are part of an integrated phosphate nutrient/fertilizer network for the Western United States.

Simplot is the largest provider of phosphate nutrients in the Western United States. As such, our products are key to the viability and vitality of agriculture in the West, including the San Joaquin Valley in California. These phosphate resources are a critical part of helping provide food security for the United States and providing nutrients necessary for feeding the world.

1.C. Idaho Mining Interest

Smoky Canyon Mine

The Smoky Canyon Mine is a key part of an integrated process as the ore from this mine is the sole source of phosphate to the Pocatello, Idaho fertilizer plant. Ore from the mine is pumped through an underground pipeline to the Pocatello facility. Products from the Pocatello plant include solid and liquid phosphate fertilizers. These products are a significant source of nutrients used by American agriculture, especially in the West and parts of the Midwest. Mining at Smoky Canyon began in 1984 and has gone through numerous substantive and thorough NEPA reviews, which has included analysis of potential impacts on GRSG. The first FEIS was published in 1982 with subsequent EIS documents in 2002, 2007, 2014 and 2019.

Dairy Syncline Mine

The FEIS for the Dairy Syncline federal phosphate leases was approved with the issuance of RODs from BLM and the USFS in April 2020. When phosphate ore reserves are exhausted at the Smoky Canyon Mine, the estimated 30 years of reserves mined from the Dairy Syncline leases will assure the uninterrupted delivery of phosphate ore to the Simplot Don Plant in Pocatello Idaho. The Dairy Syncline complex will include an open

pit mine, a new mill and tailings impoundment as well as the construction of a new power line to service the proposed mine site. This infrastructure will require significant investment and construction time prior to any ore recovery.

Other Significant Mitigation Partnerships
In Idaho, Simplot is a member of the Upper Blackfoot Confluence conservation partnership. Since its inception in 2012, the partnership has completed projects along the Blackfoot River including the replacement of old irrigation diversions with fish friendly structures; fencing cattle off of streams; and restoring stream banks, native vegetation, and meander patterns, that have opened 25 miles of historic spawning habitat and improved the health of the Upper Blackfoot River. In 2013, the partnership received The Idaho Association of Commerce and Industry Environmental Excellence Award.

Additionally, Simplot is a member of The Yankee Fork Inter-Disciplinary Team, which was formed in 2011 to rebuild and improve the habitat for spring and summer Chinook salmon and steelhead in the Salmon River in Custer County, Idaho. Priorities of the team include creating and maintaining resting spots in the river for juvenile fish by strategically placing large dead trees in the river to slow the flow, restoring natural river channel characteristics and floodplains, and improving aquatic habitat by redistributing dredge tailings piles from the floodplain.

1.D. Utah Mining Interest

In 1915, Harry Ratliffe staked nearly 15,000 acres of low to medium grade phosphate rock along the southern flank of the Uintah Mountains. Initial development of the deposit began in 1958 by San Francisco Chemical, a joint venture between Stauffer Chemical Company and Mountain Copper Limited. In 1968, Stauffer Chemical Company bought out Mountain Copper Limited and became sole owner and operator.

In 1981, Chevron Resources Company bought the property from Stauffer and operated the mining and milling operations after that date. In the 1980's, Chevron built an integrated phosphate fertilizer project. Chevron chose to construct a fertilizer plant in Rock Springs, Wyoming and built an underground pipeline to transport phosphate concentrate slurry from the Vernal mine to the fertilizer plant in Rock Springs. This pipeline is operated on lands owned by the United States, pursuant to a right-of-way issued by the BLM. The project became operational with the first shipments of phosphate concentrate through the pipeline after May of 1986.

In April of 1992, Chevron sold its entire integrated phosphate fertilizer project to SF Phosphates Limited Company (a joint venture between J. R. Simplot Company and Farmland Industries, Inc.). In 2003, the J.R. Simplot Company purchased Farmland Industries' interest in the operation, renaming it Simplot Phosphates, LLC.

Simplot's Vernal mine is a key part of this integrated process, as the ore from the Vernal Mine is the sole source of phosphate to the Rock Springs, Wyoming fertilizer plant. Products from the Rock Springs plant include solid and liquid phosphate fertilizers. These products are a significant source of nutrients used by American agriculture, especially in the West and parts of the Midwest.

Innovative reclamation to enhance wildlife and fisheries habitat associated with these operations has been and will continue to be a priority for Simplot. Simplot has worked extensively with state and federal partners as well as NGOs, industry, and landowners, to complete numerous terrestrial and aquatic habitat improvement projects.

Simplot has had an active partnership with the Utah Division of Wildlife Resources (UDWR) for a number of years to restore and improve habitats used by big game and GRSG. While many efforts have been made regarding GRSG mitigation, a highlight of some of the projects completed at our Vernal mine include the following:

- Chained approximately 400 acres of pinyon/juniper country to help establish the sagebrush and create more wildlife habitat;
- Re-seeded reclaimed areas approximately 40 acres to help establish the vegetation;
- Experimented on 40-60 acres to help establish the sagebrush. Utilized a scalper to peel back the competing plant root growth and seeded a couple different variety of sagebrush that is deemed suitable for this region and area;
- Experimented with several seasons of aerial seeding of sagebrush seeds and other seeds that require broadcasting versus the normal application of hand broadcasting; and,
- Hand planted 2,000 Wyoming big sagebrush seedlings.

Our Vernal mine has earned a number of Earth Day Awards from the Utah State Division of Oil, Gas and Mining including:

- 2006 - Environmental Education
- 2007 - Outstanding Final Reclamation
- 2009 - Mining Reclamation incorporating Public Safety Improvements
- 2010 - Nominated by the state for all three Earth Day Nomination Categories:
    - Environmental Improvement - Most acres reclaimed by a mine in Utah
    - Outstanding Results for Innovation - Biodiversity & Variable Slope Angles
    - Outstanding Site Restoration - Exceptionally high standards exceed Statutory requirements
- 2011 - Outstanding Wildlife Enhancements in Reclamation - Wildlife Stewardship
- 2012 - Stream Bank Stabilization and Restoration
- 2015 – Creation of GRSG Habitat

1. E. Other Significant Mitigation Partnerships

Since 2015, Simplot's Vernal Phosphate Mine has worked extensively with the Utah Department of Natural Resources (DNR) and Utah Division of Wildlife Resources (UDWR) to develop a voluntary GRSG conservation plan, *Vernal Mine Voluntary Sage-grouse Conservation Plan* (VMVSCP) to address disturbance of GRSG habitat, within the Uintah Sage Grouse Management Area, due to mining on Simplot's private, patented land. The VMVSCP was developed to support the submission of a Notice of Intent (NOI) to Utah's Division of Oil, Gas and Mining (DOGM) in 2018, to expand the mine. Development of the voluntary plan was consistent with the 2015 Utah Governor's Executive Order "Implementing the Utah Conservation Plan for Greater Sage-Grouse," which requires that state agencies whose operations affect sage-grouse to coordinate implementation of the updated State of Utah's *Utah Conservation Plan for Greater Sage-Grouse (*State Conservation Plan; Utah 2019) and will maintain, improve, and enhance sage-grouse habitat, opportunity areas, and the species population within the 11 sage grouse management areas (SGMAs) established in the State Conservation Plan.

The 2019 Conservation Plan and State of Utah 2018 Compensatory Mitigation Rule R634-3, (Rule recommends, does not require), a 4:1 mitigation ratio.

The main components of the VMVSCP include the following:

- Quantify greater sage-grouse (*Centrocercus urophasianus)* (hereafter sage-grouse) habitat at the mine site and proposed mine expansion area.

- Estimate impacts associated with proposed mine expansion.

- Summarize the mitigation projects implemented to date at the Vernal Mine that provide credit for future mine expansion and continue to identify mitigation opportunities.

- Propose preservation of high-quality habitat on adjacent land owned by Simplot's affiliate, J.R. Simplot Company (Simplot Company), and land owned by Simplot (Barton Ranch), and conservation measures and adaptive management that Simplot will implement to demonstrate adequate mitigation during the life of mine activities.

Mitigation opportunities identified in the Plan include, among other things, preservation of approximately 1,378 acres of breeding and late brood rearing habitat and 178 acres of winter habitat on the Barton Ranch and juniper removal with revegetation focused on greater sage grouse habitat requirements. The plan was submitted concurrently with the NOI and was approved in 2018.

Overall, implementation of the approved plan results in approximately 1,371 acres of mining disturbance over more than 50 years compared to 4,371 acres of GRSG mitigation.

2. General Comments

Because of the importance and significance of phosphate mining in Utah and Idaho, beginning in 2014, Simplot has provided a number of general and specific comments to the BLM and USFS efforts to amend land use plans for GRSG, including how the various alternatives effect the strategic mineral phosphate. These are summarized below and incorporated by reference.

- January 28, 2014, comments on the Utah BLM GRSG draft Land Use Plan Amendment and Environmental Impact Statement
- January 29, 2014, comments on the Idaho and Southwestern Montana BLM GRSG draft Land Use Plan Amendment and Environmental Impact Statement
- November 28, 2017, comments on the revision of the Utah BLM GRSG approved Resource Management Plan Amendment
- November 28, 2017, comments on the revision of the Idaho and Southwestern Montana BLM GRSG approved Resource Management Plan Amendment
- January 4, 2018, comments on the revision of the USFS GRSG Idaho and Southwest Plan Amendment
- January 24, 2018, comments on the revision of the USFS GRSG Idaho and Utah Plan Amendment
- July 24, 2018, comments to the June 22, 2018, Supplemental Notice of Intent to revise the USFS GRSG Plan Amendments for Idaho and Utah
- January 3, 2019, comments to the October 2018 GRSG proposed Land Management Plan Amendments and draft Environmental Impact Statement for the Rocky Mountain Region
- April 6, 2020, comments to the Utah BLM GRSG draft Supplemental Environmental Impact Statement
- April 6, 2020, comments to the Idaho BLM GRSG draft Supplemental Environmental Impact Statement
- November 22, 2021, comments to the BLM Notice of Intent to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impacts Statements
- May 10, 2024, comments to the BLM proposal to incorporate Areas of Critical Environmental Concern (ACEC) in the 2024 Draft RMPA/EIS.

3. Description of Alternatives

The 2024 Draft RMPA/EIS is a complex document developed as a result of extensive public comment, ongoing since 2014. It describes six (6) different alternatives for managing federal lands for the conservation of the GRSG and its associated habitat. To provide context for these comments, a rangewide summary of the main elements of the alternatives is provided below with clarification of specific elements associated with the leasing and development of non-energy minerals. Additional comments on specific elements of the alternatives of the plan regarding mining for Utah and Idaho will be provided within Section 4.

3.A. Alternative 1

Alternative 1 includes the applicable elements of the 2015 ARMPA that are being analyzed for potential amendment.

Under Alternative 1 most of the Priority Habitat Management Area (PHMA) and Important Habitat Management Area (IHMA) in the planning area is closed to new leasing of non-energy leasable minerals but states can consider expansion of existing leases.

Under Alternative 1, the BLM would re-adopt the applicable GRSG habitat management area (HMA) boundaries, goals, objectives, and actions from the 2015 RODs/ARMPAs (as updated through applicable maintenance actions). The existing language in the plans from the 2019 ARMPAs would revert to that contained in the 2015 ARMPAs (as maintained).

PHMA in all states and Idaho IHMAs would be closed to non-energy mineral development, but expansion of existing leases could be considered. In Idaho, all IHMA in Known Phosphate Lease Areas (KPLAs) is open to leasing. This would result in 7,247,900 acres (51 percent) of federal mineral estate in the decision area being closed to prospecting and leasing.

This alternative also includes designation of some areas of PHMA as Sagebrush Focal Areas (SFAs) with a recommendation to withdraw a portion of them from mineral location and entry under the Mining Law of 1872.

There are no Areas of Critical Environmental Concern (ACECs) proposed under Alternative 1.

3.B. Alternative 2

Alternative 2 is the No-Action Alternative and includes the applicable decisions from the 2019 GRSG ROD/ARMPAs.

In PHMA, states would apply the same management and expect the same resulting impacts on non-energy leasable minerals as described under Alternative 1.

SFAs would be removed from the BLM RMPs in all states except Oregon and Montana; these areas would still be managed with all the protections of PHMA but would no longer include a recommendation for withdrawal (including in the Oregon SFAs), and prioritizations would be the same as the rest of PHMA.

There are no ACEC's proposed under Alternative 2.

3.C Alternative 3

Alternative 3 includes the most restrictive measures to protect and preserve GRSG and its habitat. Alternative 3 would update the HMA boundaries based on new information and science that has become available since the 2015 and 2019 efforts. All HMAs would be managed as PHMA and would be withdrawn from mineral entry.

Alternative 3 would have the greatest effects on resource uses by making PHMA unavailable for livestock grazing and closing PHMA to mineral, right-of-ways, and renewable energy development.

Existing leases may be developed under this alternative, but the expansion of the leases or issuance of new leases would not be allowed.

Under Alternative 3, the BLM would designate 11,139,472 acres of ACECs specific to the management of GRSG; the ACECs would include portions of PHMA and would have the same allocations (i.e., allowable uses) as the rest of PHMA.

All PHMA under Alternative 3 would be recommended for withdrawal from location and entry under the Mining Law of 1872.

No areas would be identified as SFA because Alternative 3 considers the greatest level of restrictions on resource uses in all GRSG HMAs.

3.D. Alternative 4

Alternative 4 would update the HMA boundaries and associated management based on new information and science that has become available since the 2015 and 2019 efforts. Under this alternative, non-energy leasable minerals would be managed the same as under Alternative 1.

Areas previously identified as SFAs are managed as PHMA with removal of the withdrawal from mineral entry recommendation and prioritization strategies.

3.E. Alternative 5

Alternative 5 is the agency's preferred alternative. It considers other potential alignments of HMAs and associated management to balance GRSG conservation with public land

uses. Updated state GRSG management area boundaries are considered on public lands in this alternative. HMAs are like those in Alternative 4, but further refined.

Under this alternative, non-energy leasable minerals would be managed the same as under Alternative 1.

Areas previously identified as SFAs are managed as PHMA with removal of the withdrawal from mineral entry recommendation and prioritization strategies.

There are no ACEC's proposed under Alternative 5.

3.F. Alternative 6

Under Alternative 6, management for all HMAs and the topics being considered in the range of alternatives would be the same as under Alternative 5, but with the addition of designating ACECs. ACEC boundaries (and acres) would be the same as under Alternative 3, but management would be less restrictive within the ACECs compared to Alternative 3, though generally more restrictive than the rest of Alternative 6 PHMA.

Under this alternative, impacts would be the same as described under Alternative 5 except that any existing non-energy leasable operations within ACECs would not be able to expand on federal mineral estate and no new operations would be permitted in ACECs.

4. Sagebrush Focal Areas (SFAs) and the Re-Consideration of ACEC's

On May 10, 2024, Simplot submitted comments specific to potential designation of ACECs under Alternatives 3 and 6. Those comments are incorporated by reference.

4.A. Sagebrush Focal Areas (SFA's)

Simplot opposes the full or partial reconsideration of SFAs, under Alternative 1 which includes approximately 11,296,280 acres identified within the 2015 Great Basin and Rocky Mountain Sub-Regions ROD and ARMPA's.

It's difficult to determine the exact number of SFA acres being proposed by state. The 2024 Draft RMPA/EIS references HMA by state, including SFA, on Table 2-3, Comparative Summary – Acres GRSG Habitat Management Areas by State by Alternative; however, there is no SFA shown within Table 2-3.

In 2020, regarding SFA's and consistent with the review of new science, the BLM states that SFA's are considered a subset of PHMA, and management in some cases can overlap significantly with PHMA, as identified in the 2020 Idaho FSEIS, Appendix S-1-15:

> *"SFAs are a subset of PHMA and are managed as PHMA with some additional management, however that additional management overlaps significantly with management of PHMA."*

The 2024 Draft RMPA/EIS, further supports and clarifies that relationship at page 3-7:

> "*PHMAs are considered those areas with the highest value for maintaining sustainable GRSG populations. Management within PHMAs is the most restrictive, designed to promote GRSG conservation. Sagebrush Focal Areas (SFAs), a subset of PHMA, are areas identified as "strongholds" with the highest densities of GRSG and habitat connectivity and persistence."*

In both the 2020 Utah and Idaho FSEIS's, the BLM recognized that because SFA is a subset of PHMA, it is a redundant layer of resource protection and land use prioritization:

> "*In 2019, the BLM determined that SFA designations provided a redundant layer of resource protection and land use prioritization within PHMA and is acting within its discretion to remove SFA designation."*

Additionally, the Utah FSEIS on page App-3-21 and Idaho FSEIS at S-1.7.1 clarifies that the removal of SFA's would not affect meeting the 2012 USFWS Conservation Objectives Team (COT) objectives (2013 USFWS):

> *"Removal of the SFAs does not affect meeting the COT objectives. SFAs are not identified as required to meet any specific COT objective, and are not even mentioned in the COT Report."*

The Utah FSEIS further clarifies on pg. App 3-21 that the SFA designation may affect the prioritization of addressing areas within PHMA with higher resource concerns as stated below:

> *"Further, prioritizing grazing permit renewals and vegetation treatments within SFAs over all other PHMA (or non-sage-grouse habitat within designated PHMA) could have re-directed limited staff time and funding to areas that already provide functioning Greater Sage-Grouse habitat characteristics and away from areas that may have substantial resource concerns, actually resulting in the increased potential for decreased habitat quality and quantity*."

Specific to Idaho, regarding the effects of conservation associated with designating SFA and the flexibility associated with their removal, the Idaho FSEIS at page 4-22 stated the following:

> *"The removal of SFA designations would have no measurable effect on the conservation of Greater Sage-Grouse in Idaho because the Management Direction proposed for PHMA would remain in place and continue to protect Greater Sage-Grouse habitat. SFA removal would add flexibility for responsible development with*

stringent requirements including mitigation to achieve a no net loss to Greater Sage-Grouse habitat in PHMA."

The Idaho FSEIS further supported these effects in Appendix-S-1-15 at S-1.7.1:

"In the 2015 ARMPA, the SFA designation overlaid the PHMA designation and was determined to be unnecessary as a protective measure since the PHMA designation serves to protect Greater Sage-Grouse habitat and populations from the threats experienced in Idaho."

Because SFAs provide a redundant layer of resource protection and land use prioritization within PHMA, which are subject to PHMA and are not needed to meet COT objectives, there is no need to include them as a separate HMA for GRSG in Idaho and Utah. As described above, prioritizing specific resources in SFA over resources in all other PHMA may result in negative impacts to habitat quality and quantity.

4.B. Areas of Critical Environmental Concern (ACEC)

Simplot is unequivocally opposed to the designation of 69,199,000 acres of PHMA (including 11,139,472 acres of ACEC) to be managed as ACEC under Alternative 3 and the designation of approximately 11,139,472 acres of ACEC's specific to the management of GRSG under Alternative 6. Under Alternatives 3 and 6, 69,190,000 acres and 11,139,472 acres of ACEC, respectively, would be closed to new non-energy mineral leasing and the expansion of existing leases.

ACEC's were first identified and analyzed in the 2015 Utah and Idaho *Greater Sage-Grouse Proposed LUPA/FEIS's* under Alternatives C and F. Although aspects of these alternatives were incorporated into the selected action, language contained in the 2015 ROD for the Great Basin Region, including the GRSG sub-regions of Idaho and Southwestern Montana, Nevada and Northeastern California, Oregon, *and* Utah clarified that these alternatives were not selected in their entirety because they limited the use of public land in PHMAs and GHMAs to such an extent that it did not adequately accommodate local needs, customs, and culture. Also, it included proposed actions that are not necessary for GRSG conservation, such as eliminating livestock grazing. The 2015 ROD further explained that regarding Alternative C, it was not selected in its entirety because it did not best achieve the mix of multiple uses necessary to fully implement the mandate of Federal Land Policy and Management Act (FLPMA) as described below.

In enacting FLPMA in 1976, Congress directed the Secretary of the Interior to consider a broad range of resource issues, land characteristics, and public needs and values in determining how public lands should be managed. FLPMA directs BLM and USFS to manage public land for multiple uses and to consider a wide range of resource values – including the need to protect wildlife – in the context of the Nation's needs for minerals, energy, food, fiber, and other natural resources. Section 102(a)(7) establishes multiple

use and sustained yield land management directives and requires the Secretary to develop "…*goals and objectives [that are] established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law*" (U.S.C. 1701(a)(7)). In defining the term "multiple use", FLPMA § 103(c) directs the Secretary to ensure:

> *"…the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources…to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values. (43 U.S.C. § 1702(c), emphasis added). Therefore, under the multiple use and sustained yield requirements, BLM must strike an appropriate balance between potentially completing interests and land management objectives. This balance is to be achieved in the Section 102 land use planning process and the resulting RMPs.* ***FLPMA does not authorize the subordination of any of these uses in preference for a single land use such as sage-grouse habitat conservation or as stated in the June 2015 Utah Greater Sage-Grouse Proposed LUPA/Final EIS to create "sagebrush reserves" in the form of ACEC's.*** *(emphasis added)*

The designation of ACEC's specific for the management of GRSG were not further considered in either the 2018 approved resource management plans or the 2020 supplemental environmental impact statements for Utah and Idaho.

The reason for this decision is captured in Appendix, 2-13 and 1-13 of the February 2020, Utah and Idaho Greater Sage-Grouse Draft Supplemental Environmental Impact (DSEIS):

> *"BLM properly considered and analyzed the designation of ACECs in 2015. No new information suggests it is necessary to reconsider those decisions..."*

Additionally, Appendix 5 of the 2024 Draft RMPA/EIS, recognized the redundant nature of designating ACEC's, in addition to PHMA, in the applicable 2015 RODs, where it stated:

> *"However, the BLM decided not to designate PHMA as ACECs in the applicable Records of Decision because it was determined that the management actions for PHMA would be sufficient to protect GRSG habitat and, as such, ACEC designation of PHMA was not required..."*

SFA's, like ACEC's, in both the 2020 Utah and Idaho Final Supplemental Environmental Impact Statements (FSEIS's), were recognized by the BLM as a subset of PHMA, which is a redundant layer of resource protection and land use prioritization:

> "*In 2019, the BLM determined that SFA designations provided a redundant layer of resource protection and land use prioritization within PHMA and is acting within its discretion to remove SFA designation."*

The 2024 Draft RMPA/EIS does little to explain what has changed to warrant the need to reconsider designation of ACEC's in the current process, which as described above, were both unnecessary, and redundant. This is especially relevant to Alternative 3, where all HMAs are proposed as PHMA and managed as ACEC, as stated on page 4-25:

> *"Under Alternative 3, all PHMA would be managed as ACECs. The management in ACECs under this alternative, and thus the associated impacts, would be the same as for PHMA."*

The 2024 Draft RMPA/EIS at page 4-250, regarding cumulative impacts to social and economic condition explains because of the programmatic nature of the RMPA/EIS and cumulative impacts assessment, the analysis tends to be broad and generalized and it is primarily qualitative. There is little, if any, quantitative discussion of the economic impacts of closing all KPLAs in PHMA and ACEC's to new leasing or the impacts of not allowing the expansion of existing leases in ACECs.

This is supported by language included in Appendix 18, which notes that a quantitative economic impact analysis was only conducted for three resources:

> *"A quantitative economic impact analysis was conducted for three resource uses: oil and gas development and production, geothermal development and production, and livestock grazing. Due to limitations on availability of data on production and quantity of market activities, analyses for nonenergy leasable minerals, locatable minerals, mineral materials, wind and solar energy, and greater sage grouse conservation were conducted qualitatively (see* ***Section 18.2.2****, Qualitative Economic and Social Impact Analysis, for discussion on the qualitative methodology used in the social and economic impacts analysis)."*

Regarding KPLAs in Idaho, the 2024 Draft RMPA/EIS mentions in the cumulative effect section on page 4-244 the following:

> *"Under Alternative 1 most of the PHMA and IHMA in the planning area is closed to new leasing of nonenergy leasable minerals but states can consider expansion of existing leases. Idaho keeps known phosphate leasing areas open to leasing, and*

Wyoming keeps the Known Sodium Leasing Area open to exploration and consideration for leasing and development but closes it to prospecting permits."

However, the analysis fails to clarify that KPLAs in Idaho are only open to new non-energy mineral leasing in GHMA and IHMAs for non-energy minerals, as described in Table 2-4 on page 2-15. This needs to be clarified for each applicable alternative in Table 2-4. Likewise, the allowance for consideration of the expansion of existing leases in PHMA for non-energy mineral development, needs to be noted for all alternatives in Table 2-4, except for Alternative 3 and ACEC within Alternative 6, to be consistent with the text.

The 2024 Draft RMPA/EIS explains on page 4-250, that a quantitative analysis is presented specifically **for GRSG** (emphasis added) in Appendix 14, but there are clearly no quantitative analyses of closing ACEC acreage to multiple uses.

A broad and generalized, qualitative analysis of social and economic considerations, in a range wide EIS, with the exception of three resources, is not a sufficient basis to apply the onerous restrictions associated with designation of ACECs for the sole purpose of management of GRSG at the expense of other multiple uses of public land, including mineral development. Any ACEC designations should be done at the local resource management plan level, through a quantitative land use plan analysis, that applies management prescriptions, as identified in the 1988 BLM ACEC Manual, based on:

… "conducting a thorough and well-documented estimation of effects analysis"

For the reasons described above, Simplot is opposed to the selection of Alternative 3 or Alternative 6, both which incorporate ACEC designations in Utah and Idaho.

5. Recommendation to Withdraw SFA's and PHMA's from Location and Entry under the Mining Law of 1872

Simplot is opposed to recommendations under Alternative 1 to withdraw any portion of the approximately 10,000,000 acres of SFA's as described in the 2015 EIS's or 2016 DEIS, or under Alternative 3, to withdraw all HMAs, approximately 69,199,000 acres designated as PHMA, from the development of mineral resources under the 1872 Mining Law.

In its 2010 finding, the USFWS identified a number of specific threats to GRSG in the Great Basin Region, including the widespread present and potential impacts of wildfire, the loss of native habitat to invasive species, and conifer encroachment. Notably, mining was not identified as a primary threat. For that reason, measures that do not have a discernable positive affect on the species or activities that already have adequate regulatory mechanisms in place (e.g., rangeland health standards or section 3809 plans for mining) and need to be removed from consideration. Diverting those precious resources, some which may have valid existing rights associated with federal mineral

leases or valid claims, from the primary threats of wildfire and invasive species has no rational basis.

The 2020 Final Supplemental Environmental Impact Statements (FSEIS) for Idaho and Utah further clarified at 4.6.1 and 4.7.1 Range-wide Cumulative Effects Analysis – Greater Sage-Grouse:

> *"In its 2016 SFA Withdrawal EIS, the BLM quantified the possible adverse effects from locatable mineral exploration and mining on the approximately 10 million acres of SFAs proposed for withdrawal, finding that they would be limited to approximately 9,000 acres rangewide of surface disturbance over 20 years, with approximately 0.58 percent of Greater Sage-Grouse male birds possibly affected per year. The other action alternatives evaluated in the 2016 SFA Withdrawal Draft EIS similarly demonstrated negligible benefit of the proposed withdrawal to Greater Sage-Grouse and its habitat."*
>
> *The cumulative effects of implementing the Management Alignment Alternative are as described in the 2016 SFA Withdrawal Draft EIS, under the No-Action Alternative, in which SFAs are not carried forward for withdrawal. Greater Sage-Grouse would not be affected as a result of the removal of the recommendation to withdraw SFAs from location and entry under the Mining Law of 1872, as the recommendation itself does not have any on-the-ground effects. Conservation benefits of a future withdrawal would be minimal, as documented in the 2016 SFA Withdrawal Draft EIS and as explained above; therefore, there would be negligible cumulative impacts associated with the decision to remove the SFA designation*.

Furthermore, regarding rangewide mining impacts, the 2020 Utah and Idaho FSEIS's at page ES-1 stated the following:

> *"The 2015 plans recommended that sagebrush focal areas (SFAs) be proposed for withdrawal from location and entry under the Mining Law of 1872. While the BLM later proposed to withdraw these areas, it canceled that proposed withdrawal on October 11, 2017. The BLM determined that the proposal to withdraw these areas was unreasonable in light of the data that showed that mining affected less than 0.1 percent of Greater Sage-Grouse across its occupied range."*

The withdrawal of public land described under Alternative 1 and 3 from location and entry under the Mining Law of 1872 and closing SFA or PHMA (under all alternatives) to new non-energy mineral development is unreasonable, as stated in the FSEIS "all" (emphasis added) mining over the next 20 years affects less than 0.1 percent of Greater Sage-Grouse across its occupied range.

Phosphate is an important mineral in regard to food and national security. Simplot operations in the Vernal Utah and Rock Springs Wyoming areas provide approximately 300 direct jobs, with annual payroll of approximately $40 million. An approximate $60 million additionally is spent for a variety of goods and services with approximately $2 million paid in local taxes. The quantities of phosphate are significant, and could provide good paying jobs for many decades, including other mineral developments. In addition, it alleviates the nation's reliance upon international mineral resources. Appendix A provides additional information on the importance of phosphate as a major nutrient, essential to agriculture and national food security.

Unfortunately, the 2024 Draft RMPA/EIS continues to propose the closure of PHMA to new non-energy leasing/development under all alternatives without any quantitative analysis of the consequences of prohibiting or limiting access to hundreds of thousands of acres of high potential phosphate in PHMA. The DEIS continues to fail to discuss the effects on fertilizer availability, fertilizer sources and prices, and implications for national food security.[1]

As described previously, a quantitative economic impact analysis was only conducted for three resources, which did not include non-energy leasable minerals, apparently due to the limited availability of data on production and quantity of market activities and analyses for non-energy leasable minerals. Simplot respectfully disagrees. There is a plethora of data available for phosphate resources that could be utilized to develop more than a qualitative assessment. Simplot has expressed that concern in comments throughout the GRSG planning process, beginning with Simplot's January 2014 comments where Simplot discussed extensively the failure of BLM to determine the effects on local economies and the loss of phosphate mineral resource due to prohibiting access to this valuable mineral.

The No Reasonably Foreseeable Development (RFD) scenario was developed for the 2015 plans, as supported by text on page 4-386 in the Utah GRSG Proposed 2015 LUPA/FEIS:

> *"No RFD scenario for phosphate was prepared that quantifies current phosphate reserves on private and public lands and forecasts production of those reserves. In the absence of this information and any proposed plans for leasing and developing federal lands for phosphate, it is not possible to quantify potential economic impacts…"*

[1] Furthermore, in its January 2014 comments, Simplot discussed extensively the failure of the Bureau to determine the effects on local economies and the loss of phosphate mineral resource due to prohibiting access to this valuable mineral. The 2024 Draft RMPA/DEIS still has this significant deficiency.

In a glaring omission to the required hard look, no attempt has been made over the last 9 years to develop a RFD to inform the current 2024 Draft ARMP/EIS.

Prior to enacting any land management decision that would remove this resource from development requires detailed analysis not only at the national level, but also for the impacts to local economies that rely on these resources. An analysis of the effects of the selected management action is critical, in order for the analysis to inform decisions that are "locally relevant", consistent with the BLM's purpose identified in the March 2024 NOA.

6. Valid Existing Rights

Simplot appreciates the statement at page 1-7 of the 2024 Draft RMPA/EIS, that recognizes valid existing rights; however, the analysis needs to provide further clarification of the definition of a valid existing right. Specifically, valid existing rights include previously mined, actively being mined and unmined phosphate leases, and potential lease modifications to said leases and consideration for fringe leases associated with adjacent operation of existing leases and/or private land.

As previously stated in our comments, when a company enters into a mineral lease, that company obtains a right to a potential non-competitive lease of any lease modification area. See 43 C.F.R. §3510.11. This right is only subject to company's compliance with the restrictions contained within 43 C.F.R. §3510.15. If a company fully complies with those restrictions, the lease modification will be granted. Therefore, the leaseholder also holds the right to modify the lease pursuant to its application.

The character of a lease modification right was analyzed by the Ninth Circuit Court of Appeals' ruling in *Conda Partnership v. Archer Investment Co.* 12 F.3d 1105 (9th Cir. 1993) (Unpublished Opinion) (see Appendix B). In this case, the Court addressed whether an assignee had to pay royalties to the assignor on a tract that was added to the original lease by a lease modification after the assignment. The Court found that the rights to the tract added by the lease modification were created as a part of the original lease, and thus determined that those rights were outstanding upon entering into the original lease.

A lease modification is not a new lease and is subject to the exact same terms and conditions as the original lease. A Federal lessee, who is entitled to non-competitive lease of adjacent lands, also has the sole discretion of whether to enter into a new lease of the fringe acreage or to modify the existing lease by adding adjacent acreage. *See* 43 C.F.R. §3510.12(b). 43 C.F.R. §3510.21 explicitly provides that "a fringe acreage lease is a *new* Federal lease" but that a lease modification is not a new Federal lease, but in fact is subject to *"the same terms and conditions as the original Federal lease."* These sections clearly provide that when a lessee desires to create a new lease, he can choose to do so by entering into a fringe acreage lease or if the lessee chooses not to enter into

a new lease, he can choose to modify the existing lease. If the lessee chooses to modify its existing lease, the only modification to the terms and conditions is the description of the land covered by the lease. The modified lease terms and conditions are in every other aspect identical, including rentals, royalties, bonus payments, and other financial terms, lease number, and readjustment period. The regulations and lease modification documents clearly provide that the modification is not a new lease but merely a continuation of the original lease.

As an example, when a company has a binding phosphate mineral lease with the BLM, that lease provides the lessee with a contractual right to a lease modification. Section 1 of the Lease states that it is subject to the "regulations of the Secretary of the Interior now or hereafter in force". Therefore, the lessee is entitled to its contract rights, including the right to a lease modification. Because the lessee has contractual rights to preferentially lease the modification area pursuant to the lease, those rights cannot be abrogated by the RMPA. Notably, due to the valid existing rights provided in the lease, the adaptive management responses outlined in Section 2.5.13 would not apply.

The BLM has provided further clarification for consideration of a fringe lease throughout the GRSG planning process. For example, the 2015 Idaho and Southwestern Montana Greater Sage-Grouse Proposed Land Use Plan Amendment /Final EIS provided the following clarifications on page 4-265:

> *"Fringe leases and modifications to existing leases would be allowed in PHMA to satisfy valid existing rights"*

Additionally, the 2018 Utah Greater Sage-Grouse Proposed RMPA/Final EIS states the following at page 4-34:

> *"For the purpose of clarifying impact analysis in this document, the status of a fringe acreage lease in relation to the 2015 ARMPA allocations is addressed here. While the PHMA land use allocation for nonenergy minerals remains closed, there is a consideration that leases could be considered next to existing operations (see 2015 ROD/ARMPA MA-MR-15). Though PHMA is noted as closed, unmined nonenergy mineral leases, including phosphate leases, have valid existing rights to which this allocation does not apply."*

Under Alternative 3, 69,199,000 acres of PHMA (including 11,139,472 acres of ACEC) would be managed as ACEC and under Alternative 6, approximately 11,139,472 acres would be designated as ACEC's specifically for the management of GRSG. These acres would be closed to new non-energy mineral leasing and the expansion of existing leases. Because of the valid existing rights afforded in the existing leases, implementation of these alternatives that prevent adjusting these leases to assure full recovery of the

resource as mandated by BLM requirements would prejudice the lease holder's valid existing mineral rights potentially resulting in a taking of existing rights.

It should also be clarified that the construction of roads and support facilities needed to support development of leases is allowed. This includes being able to construct roads and facilities needed for development of the lease, and the modification of that lease as provided for in existing rules. A valid mineral lease is a contract authorizing mining operations on that tract and granting the right to utilize adjacent lands by executing a lease modification. These rights cannot be *suspended, revoked, or modified* by the ARMP.

Finally, because existing leases are valid existing rights established with the premise that they will be developed, the acreage associated with existing leases should not be included in habitat management designations, such as PHMA, used to calculate disturbance and density thresholds.

7. Density and Disturbance Criteria

The 2024 Draft RMPA/EIS continues to incorporate disturbance and density caps under all alternatives. Simplot strongly disagrees that a 3% limit on surface disturbance at the Habitat Assessment Framework (HAF) fine scale, as well as at the project scale and that an average density of one energy and mining facility per 640 acres (density cap) are warranted range wide.

The 2024 Draft RMPA/DEIS on page 2-28 provides rationale for this approach as follows:

> *"To conserve seasonal habitat requirements associated with a local GRSG populations disturbance caps will be applied to PHMA within the Habitat Assessment Framework (HAF) fine scale (Stiver et al. 2015, as revised), as well as at the project scale. Previous application of a disturbance cap at a larger scale (e.g., biologically significant unit) did not limit the consideration to local populations and were often "diluted" by large amounts of non-habitat."*

The Idaho 2019 GRSG ROD and ARMPA, recommended removing the density cap of an average of one energy and mining facility per 640 acres and only applying the 3% disturbance criteria at the Biologically Significant Unit (BSU) level. The rationale for this approach was extensively addressed in the May 2018 DEIS and November 2018 FEIS.

These documents recognized that Idaho has very little disturbance related to major infrastructure in designated core areas, and imposing a complicated project level disturbance cap formula in these plans was unnecessary. The removal of the disturbance criteria at the project level would allow the BLM to intentionally cluster developments within areas already disturbed by discrete anthropogenic disturbance while maintaining the overall BSU disturbance below 3%. They reiterated that the 3% disturbance cap at

the project level has the potential to spread or "encourage" development into undeveloped areas of GRSG habitat just to avoid reaching the 3% project scale disturbance cap in already fragmented areas. Similarly, it was noted in the 2018 DEIS on page 4-10 that the removal of the one energy or mining facility per 640 acres on average density cap would have little effect on GRSG conservation in PHMA in Idaho because Idaho has limited energy or mining development in Sage-grouse habitat.

The November 2020, Idaho GRSG FSEIS supported this recommendation based on the following language on page 4-22:

> *"All 8 BSUs in Idaho are well under the 3 percent BSU scale Disturbance Cap (most are less than 1 percent) and are expected to remain low because of the no-net-loss mitigation standard and the other restrictions to development in PHMA and IHMA."*

In Utah, Simplot supported the recommendations in the 2018 Proposed Plan Amendment analyzed in the 2020 FSEIS that exceedances of the disturbance and density cap, at both the BSU and project analysis area in PHMA can be allowed if site specific sage-grouse habitat and population information combined with project design elements (siting minimization measures and compensatory mitigation) indicate a project will "improve" habitat within the proposed project analysis area or within the PHMA in the population area where the project is located.

Page 3-10 of the 2018 Utah GRSG Proposed RMPA/FEIS described the issues with applying a static disturbance cap as follows:

> *"Because of the interspersed nature of habitat, non-habitat, and potential habitat in Utah's PHMA, it became evident that applying a static disturbance cap was resulting in missed opportunities to improve habitat conditions for local populations."*

This approach was carried forward as a key management decision in the Utah GRSG ARMPA and ROD issued in March 2019.

This guidance recognized that there is non-habitat in PHMA and provides flexibility to address situations where disturbance will actually improve habitat which is a positive step. Utah is an excellent example of where these clarifications are relevant. As stated at page 22 in the 2019 Utah Conservation Plan for GRSG:

> *"Conifer encroachment threatens much of Utah's sage-grouse habitat and will continue to threaten the available habitat."*

The 2019 Utah Conservation Plan goes on to explain at page 22:

"Range-wide, pinyon pine and juniper (conifer) cover expands into sagebrush habitat by approximately 200,000 acres each year (Stiver et al. 2006). Within the 7.4 million acres that comprise Utah's SGMAs, approximately 3.1 million acres had greater than 4% conifer cover as of 2011 (Falkowski et al. 2014, Falkowski et al.2017). Examples include areas where pinyon pine, Utah juniper, deciduous shrubs or other plant species have encroached upon sagebrush habitat, rendering it unsuitable for sage-grouse."

And:

"Therefore, the best-available science suggests that sage-grouse populations in Utah are limited by the amount of habitat that is available to them (i.e.,"space-limited.)"

In those areas where conifers are the dominant vegetative community and negatively impacting GRSG habitat, mining with concurrent reclamation is one example of an action that has the potential to reduce conifer cover and subsequently create more "usable space" consistent with the Conservation Plan.

As previously mentioned in our comments, this change recognizes site specific opportunities to improve habitat (such as reducing tree cover) that may not exist within a project analysis area but could exist in a wider population area such as a BSU.

Simplot appreciates the addition of language on page 4-97 of the 2024 Draft RMPA/DEIS regarding Alternative 1 in Utah:

"However, the BLM would not apply the disturbance cap in a manner that would eliminate all reasonable opportunities to develop an existing lease."

There is no clarification of how this provision would be applied or if it applies to other alternatives besides Alternative 1.

Density criteria described in Appendix E of the Utah Greater Sage-Grouse 2019 Approved RMPA and ROD rightfully recognized that non-habitat does not apply:

"However, the density cap may be exceeded if a project is located in non-habitat (see MA-SSS-1 language related to placement of development in non-habitat portions of PHMA) ..."

If disturbance and density caps are incorporated in the plans based on state specific guidance, non-habitat in PHMA should be excluded in both the disturbance and density cap calculations within all alternatives.

7.A. Administering Disturbance and Density Caps

While Alternatives 1, 2, 4, 5 and the non-ACEC portion of 6 allows for consideration of the expansion of existing leases within PHMA for non-energy leasable minerals, previous analysis determined that PHMA minimization measures, such as mitigation, disturbance cap, density cap, buffers, seasonal restrictions, and RDFs, would preclude most development. The primary measure that was anticipated to preclude development of non-energy minerals, mineral materials, and coal in PHMA was the disturbance and density caps applied at the project scale. Allowing exceptions to the disturbance and density caps based on site-specific habitat condition, population information, and proponent-volunteered project design elements is essential under all alternatives.

As identified in the Utah and Idaho 2020 GRSG FSEISs in Appendix 3. Review of the NTT and COT Report's Relevance to the Planning Process; Incorporation of the NTT, COT, and USGS Summary of Science into the Utah Planning Process and Appendix S-1. Review of the NTT and COT Report's Relevance to the Planning Process; Incorporation of the NTT, COT, and USGS Summary of Science into the Idaho Planning Process:

> *"Providing an exception for the disturbance cap does not affect meeting the COT objectives. The COT Report does not specifically call for implementation of a disturbance cap. Rather, the COT objectives discuss the importance of minimizing disturbance to Greater Sage-Grouse habitat."*

8. Habitat Designation and Objectives for GRSG on Public Lands

Habitat designation and objectives for GRSG should be empirically based on locally relevant GRSG locations differentiated by environmental variations, as there can be significant variability in habitat selection based on local conditions. Habitat needs to be further refined based on site specific conditions for all plans and a clear process needs to be identified for designating areas of non-habitat without having to revise land use plans.

One example is in Utah where community characteristics for desirable sage-grouse habitats as delineated in the 2018 Utah Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement were based on habitat vegetation data collected from sage-grouse nesting and brood rearing locations in Utah from 1998 to 2013 (Dahlgren and Messmer et al. 2018). These habitat guidelines are more specific to Utah than the general habitat guidelines for the entire range of sage-grouse released by Connelly et al. in 2000 and are a departure from the habitat guidelines that Connelly et al. defined, which BLM and USFS generally adopted in their 2015 LUPA's. This vegetation data from 1998 to 2013, in combination with community specific

vegetation, climatic, and elevation data, show that sage-grouse in Utah, in general, select sites with lower and sparser vegetation conditions than Connelly's guidelines would recommend (Ebid). Simplot supports the inclusion of these updated habitat objectives for Utah under all alternatives in the 2024 Draft RMPA/EIS.

Likewise, those areas that are currently under lease from the state or the BLM for mineral development should be removed from both state and federal GRSG habitat designations. As described in Section 6, these leases provide valid existing rights to the leasee associated with the development of those leases as well as their potential expansion.

9. Mitigation Hierarchy and Compensatory Mitigation

Simplot supports the application of **voluntary**, compensatory mitigation in PHMA which can be used in site-specific NEPA analysis to address the specific impacts of a proposed action to achieve "no net loss" of habitat. Additionally, Simplot supports the development of a Habitat Quantification Tool (HQT) or equivalent, developed at the state level that accounts for site-specific habitat characteristics or attributes that influence sage-grouse habitat selection across multiple scales to produce a habitat unit, or generally functional acre, to be used to calculate debits associated with disturbances or credits associated with conservation or mitigation where mitigation is driven by compensating for habitat debits (one habitat debit is equal to one habitat credit).

In Idaho, the "Idaho HQT Science Team" is comprised of specialists from the Idaho Fish and Game, BLM, USFWS, The Nature Conservancy and the Idaho Governor's office. In June of 2019 the Idaho HQT Science Team published the "*Idaho Sage-Grouse Habitat Quantification Tool, Scientific Methods Document*." (IDFG 2019) Utilizing a HQT allowed the appropriate state and federal agencies to work cooperatively to evaluate proposed ancillary features of Simplot's Dairy Syncline mine and reclamation plan to disturbance in GHMA. This resulted in calculation of 193.5 debits due to proposed GHMA disturbance compared to 740.5 of credits associated with Simplot's proposed voluntary mitigation. This demonstrates that the HQT approach provides a quantitative tool that is based on best available science, rather than relying on arbitrary mitigation ratios.

Simplot supports the language in Alternative 2 (No Action Alternative) for Utah and Idaho, clarifying that compensatory mitigation is voluntary and that it will be coordinated with individual states based on state specific guidance and **considered** on a project-by-project basis for projects proposed on federal land.

This approach is consistent with guidance outline in the COT report and summarized in the Utah 2020 FSEIS at App-3-22:

> *"The COT Report does not include a specific objective with a standard mitigation strategy. However, it does note that "when avoidance is not possible, meaningful minimization and mitigation of the impacts should be implemented" (page 31). It*

also states that "efforts should be made to restore the components lost within the PAC (e.g., redundancy or representation) in other areas such that there is no net loss of sage-grouse or their habitats" (page 37). The 2019 ARMPA exceeds this standard by committing to "undertake planning decisions, actions and authorizations 'to minimize or eliminate threats affecting the status of [GRSG] or to improve the condition of [GRSG] habitat'" (MA-SSS-3A)."

For mining, the COT report specifically stated that no net loss is the appropriate mitigation consideration and stated the following at page 49:

"For mining, the COT report objective is to maintain stable to increasing GRSG populations and no net loss of GRSG habitats in areas affected by mining.

The 2020 Utah FSEIS further clarified at page App-3-22 that:

"The COT Report and its objectives do not rest the burden of achieving "no net loss" solely on project proponents, merely that mitigation achieves no loss of habitat. The 2019 ARMPA Compensatory Mitigation Strategy is in alignment with and exceeds the COT report's standard of "no net loss."

Since, 2015, federal and state agencies have worked cooperatively to further align policy and regulation regarding sage-grouse management, including additional regulatory measures consistent with **recommendations** contained in the COT and NTT reports to address mitigation. Idaho requires no net loss in PHMA and GHMA areas and Utah requires a 4:1 compensatory mitigation ratio in sage-grouse habitat.[2]

Simplot previously commented that mitigation discussions need to consider a wide variety of opportunities including preservation (such as establishing conservation easements on private land), the establishment of mitigation banks, public-private partnerships, conservation plans, habitat restoration, noxious weed control, fence marking/removal, riparian restoration projects, prescribed fire (where appropriate), fuel breaks, green strips and payment in lieu.

The definition of mitigation in the Glossary of the 2024 Draft RMPA/EIS is consistent with the mitigation hierarchy described in 40 CFR 1508.20.

***"Mitigate, Mitigation:** Mitigation includes (a) avoiding the impact altogether by not taking a certain action or parts of an action, (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation, (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment, (d) reducing or eliminating the impact over time by preservation and maintenance operations*

[2] Simplot has previously provided comments to Utah disagreeing with the 4:1 mitigation ratio approach because it is arbitrary, has no proportionate nexus to the impact, and ignores functional tools developed by other states to provide a scientifically defensible approach towards mitigation.

during the life of the action, and (e) compensating for the impact by replacing or providing substitute resources or environments."

Simplot disagrees with the statement on page 2-22 of the 2024 Draft RMPA/DEIS that:

"Compensatory mitigation…… should be completed prior to associated actions occurring."

This statement is clearly inconsistent with the definition of mitigation at 43 CFR 1508.20. as carried forward in the 2024 Draft RMPA/EIS at G-5 and G-6, specifically regarding rectifying the impact by repairing, rehabilitating, or restoring the affected environment and reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

10. Lek Buffers and Required Design Features (RDF's)

Simplot appreciate the clarification on page 1-8 of the 2024 Draft RMPA/EIS that changes to the existing plans was not made by the DEIS regarding lek buffers and RDF's:

"However, after reviewing existing plans, available literature, and habitat and population trends, changes to existing language on RFDs and lek buffers, as well as the other minimization measures, would not be made for the following reasons:"

In Idaho, Simplot supports the approach identified in the Idaho GRSG 2020 FSEIS at page 2-40 under the Proposed Plan that clarifies that RDFs will not be required in GHMA, but will be applied as Best Management Practices (BMPs) which are defined in the Glossary:

"A suite of techniques that guide or may be applied to management actions to aide in achieving desired outcomes. BMPs are often developed in conjunction with land use plans, but they are not considered a planning decision unless the plans specify that they are mandatory."

The Idaho GRSG 2020 FSEIS at page 4-31 further explained that the 2018 FEIS clarified and strengthened how BMPs are to be implemented in GHMA. They should be applied unless they are technically or economically impracticable.

Simplot agrees with the recommendation in the 2018 Utah GRSG Proposed RMPA/FEIS to remove 448,600 acres (BLM administered surface and BLM administered mineral estate) of designated GHMA along with associated requirements of lek buffers, required design features, habitat objectives, and leasing prioritization.

As stated in the Utah FSEIS at page 2-5:

> *"The Proposed Plan Amendment focuses management on PHMA to protect the seasonal habitats that support over 95 percent of Greater Sage-Grouse populations in Utah, while removing the designation and management of GHMA. Additionally, PHMA management would be adjusted to maintain avoidance protections while allowing site-specific adjustments to account for the unique nature of habitat types and distribution throughout Utah."*

Regarding lek buffers, the BLM in the 2024 Draft RMPA/EIS needs to consistently identify that buffers were not established to "not allow activities" but to "assess and address" impacts to maintain lek persistence and clearly identify that lek buffers can be adjusted based on local scientific data (including landscape features) as identified in the Utah 2018 Proposed Plan Amendment and on page 2-7 of the 2020 Utah Greater Sage-Grouse FSEIS.

The 2024 Draft/RMPA EIS further supports this approach with language on page 1-8:

> *"There is no single buffer distance that would be appropriate for all populations and habitats across the range of GRSG (Manier et al. 2014)...As described above, lek buffers are not the only or final conservation tool to avoid or minimize disturbance."*

For this reason, although Idaho allows for justifiable departures to increase or decrease buffer distances, Simplot does not agree with the application of buffers in Idaho as a "Required Conservation Measures", described in Appendix 19.

In Idaho, Simplot supports the refinement of lek buffers as it was identified in the 2018 draft RMPA under the Management Alignment Alternative. That approach protected the most critical habitat and provided better alignment with the Governor's Plan, while recognizing that buffers were not needed in GHMA. The draft RMPA recognized this approach was appropriate based on the fact that the no net loss mitigation standard would keep GRSG habitat at baseline.

This alternative also incorporated the use of the USGS literature on minimum buffers in IHMA and PHMA. This approach was modified based on comments received to the draft RMPA resulting in increased buffer sizes in IHMA and buffer requirements for GHMA in the 2019 FEIS and carried forward in the 2019 Plan. There is little explanation provided in either document as to why this approach is needed based on the conclusion in the draft RMPA that the measures outlined in the draft RMPA were already consistent with the no net loss standard.

Further, the application of lek buffers In Idaho should only apply to active leks that meet the WAFWA definition. This would provide regulatory certainty and eliminate making judgement calls at the local level. As clarified in Appendix 19, two-thirds of the pending active leks are already within PHMA, which is closed or excluded from multiple disturbance types, similarly IHMA provides many of these same protections. Appendix 19 further clarifies that applying lek buffers to pending active leks in Idaho would have minimal benefits in GHMA, with only 1% of GHMA in BLM lands being protected.

Finally, as Simplot has noted in previous comments, the 2024 Draft RMPA/EIS fails to disclose the basis by which private lands can be considered in a federal land management planning document. This seems to suggest a de-facto critical habitat designation without a listed species. While Section 4 of the ESA can take into consideration conservation efforts on state and private lands to avoid a listing, BLM has no authority under FLPMA to apply habitat management designations to private land. The 2024 Draft RMPA/EIS recognizes at page ES-1 that the land management plans include goals, objectives, and management actions for managing GRSG habitat on BLM-administered public lands (emphasis added). Implementing management actions for BLM land based on the inclusion of private land, such as in the case of assessing disturbance or density criteria, is clearly not within the purview of the agency. All GRSG habitat designations must be removed from private land that do not include federal mineral estate.

11. Summary and Recommendations

As described at page 1-13 and 5-7, Simplot expects state specific RODs as a result of this analysis. Subsequently, our recommendations are consistent with the purpose and need of the DEIS to, "…provide the BLM with locally relevant decisions that accord with rangewide GRSG conservation goals."

As stated previously, in order to be a locally relevant decision, it is critical that any decision that may result in the removal of a potentially feasible mineral resource, including phosphate, is thoroughly and quantitatively analyzed to determine the effects to the local economies that rely on these resources, but also to address the cumulative effects at a broader level as required by NEPA.

Simplot generally supports Alternative 2, the State Management Alignment Alternative (No Action), for the Idaho ARMP. Simplot has been consistently engaged with the Idaho Governor's office as well as Idaho Fish and Game who have worked diligently with BLM throughout the development of the State Management Alternative to assure the unique and diverse management of GRSG habitats in Idaho are addressed at the local level.

Regarding lek buffers, Simplot supports the minimum lek buffer distance estimates identified in the USGS report, *Conservation Buffer Distance Estimates for Greater Sage-*

Grouse - A Review (Manier et al. 2014), with justifiable departures as described in Appendix 19 Idaho Buffers Appendix Alternative Language.

For the Utah ARMP, Simplot generally supports Alternative 5, with the exception of incorporating the application of voluntary mitigation, and the exclusion of GHMA as described under Alternative 2. Simplot has worked diligently with BLM and Utah to accurately identify GRSG habitat within the area of Simplot operations. The updated habitat management boundaries within Alternative 5 reflects these interactions with the agencies.

Additionally, Simplot supports the consistent application of definitions between the BLM and states as described in Appendix 4.

Simplot does not support the application of lek buffers to pending active leks under Alternative 3,4,5 and 6.

Simplot does not support the designation of SFAs under Alternative 1 or ACEC's under Alternative 3 and 6, for reasons previously described or the recommendation to withdraw SFA's from mineral location and entry under the Mining Law of 1872.

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13. Appendices

Appendix A

Simplot Letter in Response to USGS Request for Comments on the List of 50 Proposed Critical Minerals (November 9, 2021, Federal Register [Vol. 86 (214) p. 62199])

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December 9, 2021

SUBMITTED ONLINE VIA: http://www.regulations.gov
SENT VIA EMAIL TO: jmosley@usgs.gov

Draft List of Critical Minerals
MS–102
U.S. Geological Survey
12201 Sunrise Valley Dr.
Reston, VA 20192.

Dear Sir/Madam:

This letter is in response to the request for comments on the list of 50 proposed critical minerals published on November 9, 2021 in the Federal Register [Vol. 86 (214) p. 62199]. The list of proposed critical minerals was issued by the U.S. Geological Services (USGS).[1] This letter provides the comments of the J. R. Simplot Company (Simplot) on what minerals should be considered "critical." Simplot is a Boise, Idaho based agribusiness company that has been creating valuable plant nutrients from phosphate minerals for over 70 years. Simplot has phosphate mines in Idaho and Utah and uses this critical mineral to produce nutrients for American agriculture.

I. Introduction

Phosphate is a major nutrient that is essential for U.S. agriculture. The Energy Act of 2020 defines critical minerals as those which "are essential to the economic or national security of the United States; the supply chain of which is vulnerable to disruption (including restrictions associated with foreign political risk, ... protectionist behaviors, and other risks throughout the supply chain); and serve an essential function in the manufacturing of a product (including ... agriculture-related applications)." For its draft 2021 list, USGS used a quantitative methodology that defines supply risk as "the confluence of three factors:" the likelihood of a foreign supply disruption, trade exposure and economic vulnerability to a supply disruption. A normalized score was calculated using the geometric mean of the three individual components with a threshold of 0.40. Using this methodology, phosphate had a score of 0.25 and was not recommended for inclusion on the critical minerals list (CML). However, this methodology did not consider all leading producing countries of phosphate. Further, this methodology does not account for

[1] 2021. USGS. Methodology and Technical Input for the 2021 Review and Revision of the U.S. Critical Minerals List.

the potential impacts on key aspects of national security such as securing a reliable food supply, and it does not take into account the fact that certain imports have decreased due only to the imposition of trade remedies and certain foreign exporters' decision to halt all shipments to the United States in an effort to squeeze U.S. farmers. An assessment that accounts for these considerations demonstrates that phosphate should be designated as a critical mineral.

II. Phosphate is a Critical Mineral

The draft list of critical minerals does not include phosphate; *phosphate though needs to be categorized as a critical mineral*. As described below, the value of phosphate to our national food security has been realized for over 100 years. Increasingly accessing domestic phosphate minerals has been difficult due to permitting delays, hurdles put in place by the Department of Interior, and litigation. Meanwhile, imports of phosphate into the United States are increasing.

Executive Order 13817 defined a critical mineral as the following:[2]

i. a non-fuel mineral or mineral material essential to the economic and national security of the United States,
ii. the supply chain of which is vulnerable to disruption, including restrictions associated with protectionist behaviors, and
iii. that serves an essential function in the manufacturing of a product, including agriculture-related applications, the absence of which would have significant consequences for our economy or our national security.

As detailed in this letter, phosphate is a major component of nutrients needed to grow food in America. Being able to supply the food needs of the United States (i.e., food security) is a national and economic security issue. The ability to produce domestic phosphate for fertilizer needed to grow food in America is threatened by foreign imports and by a very burdensome, time and cost consuming regulatory process to obtain approvals for new mines.

III. Phosphate is Essential to Food Security and Is Essential to Producing Phosphate Fertilizer and Staple Crops

Phosphate is critical to the production our nation's major crops, such as wheat, corn, soybeans, and cotton. Phosphate is the base mineral for phosphate fertilizer, an irreplaceable nutrient for these crops. These commodities feed and clothe Americans and support the nation's livestock. The importance of phosphate to national security has been recognized for over a century. President Taft, in a

[2] Executive Order 13817, issued on December 20, 2017, "*A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals*."

special message to Congress on natural resources, stated the following:[3]

> "The extent of the value of phosphate is hardly realized, and with the need that there will be for it as the years roll on and the necessity for fertilizing the land shall become more acute, this will be a product which will probably attract the greed of monopolists."

Besides the "monopolists", another concern was the acquisition of phosphate by foreign interests.[4] The eastern phosphate deposits were owned or controlled by European companies. Most, if not all this ore was being exported for the use of European farmers. It was widely recognized that domestic sources of phosphate for domestic fertilizer manufacture and use was vital to the development of this country, and that we should not be dependent on European suppliers.

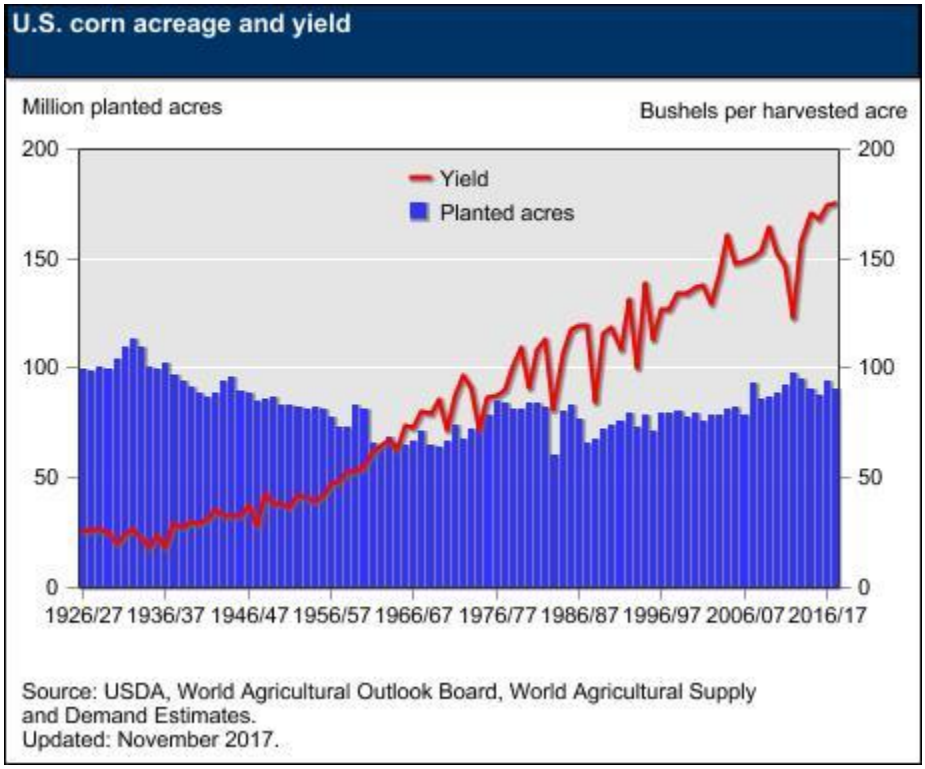
Besides the eastern phosphate deposits, the other main source of phosphates in the United States is the Western Phosphate Field. The Western Phosphate Field covers over 350,000 km^2 in Idaho, Montana, Utah and Wyoming and is one the largest resources of phosphate rock in the world.[5] The importance of this source of phosphates was recognized by Presidents Roosevelt, Taft and Wilson. On December 9, 1908, the Secretary of the Interior issued a Secretarial Order that created a "temporary" phosphate reserve of 18,400 km^2 in Idaho, Utah and Wyoming. Three additional Secretarial withdrawal actions in 1908 and 1909 added approximately 18,600 km^2 to the phosphate reserve. In response to President Taft's 1910 Special Message, the Pickett Act was passed on June 25, 1910. The Pickett Act provided the Secretary of Interior the ability to withdraw certain federal lands from exploration and occupation. Under the Pickett Act, Presidents Taft and Wilson withdrew approximately 10,500 km^2 in Idaho, Utah and Wyoming (1910-1917) and formally created the Western Phosphate Reserve.

The Mineral Leasing Act of 1920 rendered moot the need for phosphate withdrawals. Eventually, the Department of Interior created Known Phosphate Leasing Areas (KPLAs) where the phosphate resource is available only through the competitive leasing provisions of the Mineral Leasing Act. Western phosphate is a major source of phosphate used to grow crops in the United States. Approximately 1.2 million tons of phosphate fertilizer (as P_2O_5) is produced in the Western Phosphate field. This can provide sufficient fertilizer to grow 24 million acres of corn.[6] For context, in 2015 approximately 90 million acres of corn was

[3] Taft. 1910. Special Message to Congress. January 14.
[4] USGS. A History of Phosphate Mining in Southeastern Idaho.
[5] Hein. 2004. Life Cycle of the Phosphoria Formation. Elsevier B.V. Amsterdam.
[6] California Fertilizer Association. 1995. Western Fertilizer Handbook, 8th edition. Approximately 100 lbs. of P_2O_5 is needed per acre of corn.

grown in the United States.[7] Fertilizers are one reason that corn production has increased, while the number of planted acres has decreased (see Figure 1). This "value add" by fertilizers such as phosphate, is one reason why having strong domestic sources of phosphate is important for the United States to produce its own food supply.

Figure 1
Corn Acreage and Yield



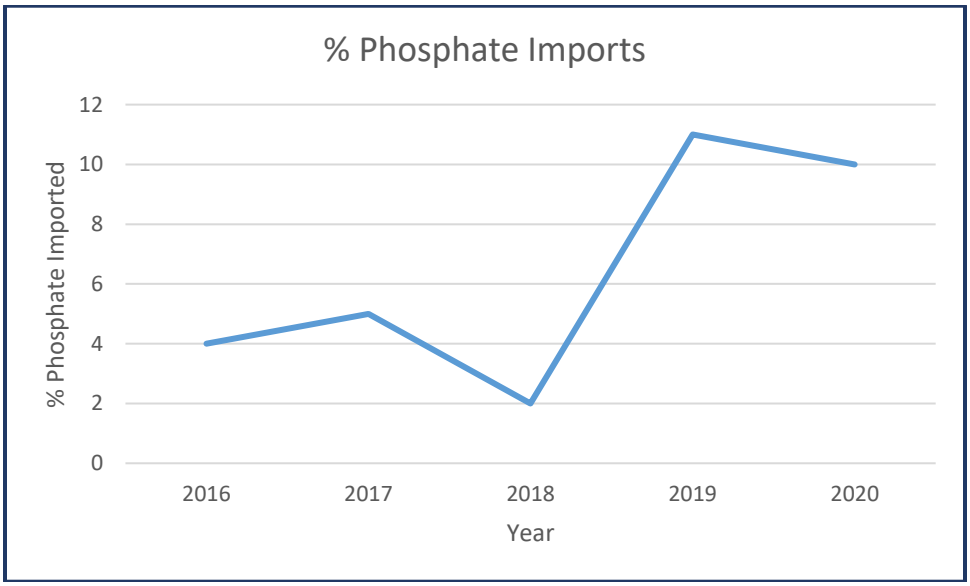
IV. The Growing Dependence on Foreign Phosphate

The phosphate supply in the United States is subject to disruption. In recent years, foreign production of phosphate fertilizers is increasing and imports of such materials into the United States have increased substantially. As an example, Figure 2 shows imports of phosphate rock into the United States. In assessing supply risk, the USGS report correctly notes that China is a leading producing

[7] Department of Agriculture. 2018. Economic Research Service. https://www.ers.usda.gov/topics/crops/corn/background.aspx

country.[8] However, the report fails to note that Morocco and Russia are even more significant producers and, importantly, exporters of phosphate. Moreover, the largest portion of these imports have come from countries that engage in unfair trading practices with respect to phosphate fertilizer: China, Russia, and Morocco. Imports from these countries have fallen somewhat in recent years, but only due to strong action by the U.S. government to defend domestic producers, as detailed below.

Figure 2
Phosphate Rock Consumption in the U.S. from Imports[9]



Historically, the largest sources of phosphate products imported into the United States are from Morocco and Russia (see Table 1). *These imports in 2018 and 2019 exceeded 25% of the monoammonium phosphate (MAP) and diammonium phosphate (DAP) consumption in the U.S.* In recent years, China has also been a major importer of phosphate into the United States. Overseas, major phosphate production projects (especially in Saudi Arabia and Morocco) are being built, creating new capacity that will drive additional foreign phosphate into the United States.

[8] *See* N. Nassar and S. Fortier, "Methodology and Technical Input for the 2021 Review and Revision of the U.S. Critical Minerals List," USGS, at 11.
[9] Jasinski. S.M. 2021. Mineral Commodity Summaries - Phosphate. U.S. Geological Survey, January

With respect to imports from China, the increasing imports were only reduced by the imposition of 25 percent tariffs on phosphate fertilizer from China as part of the U.S. government's Section 301 investigation into Chinese unfair economic practices.

Imports from Morocco and Russia also increased substantially over the past few years. Indeed, earlier this year, the U.S. International Trade Commission found that the domestic industry producing phosphate was materially injured by these imports. The U.S. Department of Commerce ("Commerce") found that Russia and Morocco engaged in protectionist behaviors by providing unlawful subsidies to their respective phosphate producers. As result, Commerce imposed countervailing duties on these imports.

It should also be noted that the single Moroccan producer, OCP S.A. ("OCP"), a state-owned entity, immediately cut off its shipments of phosphate fertilizers to U.S. farmers as soon as the Commerce Department and the ITC initiated their investigations in July 2020, well before any tariffs were applied. This shows that the Moroccan supplier is more than willing to squeeze American farmers and disrupt their supplies when it suits foreign interests. This is compelling evidence that phosphate is extremely vulnerable to disruption and should be designated as a critical mineral.

Expansion of overseas operations also threatens the economic viability of domestic phosphate producers. Saudi Arabia in the past decade has invested billions of dollars into phosphate production. The Al-Jalamid Phosphate fertilizer complex in Saudi Arabia is capable of producing approximately three (3) million metric tons of diammonium phosphate fertilizer (DAP) (approximately 1.5 million metric tons as P_2O_5).[10] A second mega phosphate fertilizer being built at Waad al-Shamal will increase total Saudi Arabian production to over six (6) million metric tons of DAP (3 million metric tons of P_2O_5 annually).[11] These projects will make Saudi Arabia the third largest phosphate fertilizer manufacturer in the world and contribute to potential global overcapacity in the sector.

[10] International Fertilizer Association. 2004. Production and International Trade Conference, Dubai, UAE. Note, this project produces approximately 3 million metric tons of DAP; for conversion to P_2O_5, it is assumed that 50% of the final product is P_2O_5.
[11] Reuters. 2016. Saudi Ma'aden seen ramping up phosphate output from Waad al-Shamal in 2017. November 24.

Table 1
MAP/DAP Imports (metric tons) to the U.S.[12]

Country	2017	2018	2019
Morocco	1,177,500	1,518000	1,707,800
Russia	383,900	840,200	738,700
Saudi Arabia	32,800	167,900	224,700
Mexico	27,000	104,800	162,100

In summary, domestic phosphate production is highly exposed to trade shocks that threaten the economic well-being of U.S. producers, farmers, and consumers. It is vital that the U.S. government designate phosphate as a critical mineral as part of the strategy to ensure a secure and reliable supply for U.S. agriculture.

V. Permit Streamlining is Crucial for U.S. Phosphate Production

To avoid disruption of supply and maintain a viable phosphate fertilizer industry in the United States requires a reliable and predictive process to access phosphate ore. As described earlier in these comments, a significant portion of the phosphate present in the United States is found on federal lands in the Western U.S. Increasingly though, getting federal and state approvals to mine such ore is unpredictable due to permitting process delays and litigation. Often, the environmental studies, permitting processes and subsequent litigation result in permitting expenses exceeding $10 million. Recently, it took ten (10) years to get approval for a new major mining project in southeast Idaho.[13] Thus, an increasingly growing uncertainty in permitting combined with significant permitting costs and rapidly expanding foreign production and unfair trading practices is putting at risk domestic (United States) phosphate production. A recent article in the fertilizer trade press describes the current situation very well.[14]

> "Over the last three years, the global phosphates market has become more supply driven and more competitive, putting producers in North America and China under severe pressure from falling global phosphates prices and thinning margins.
>
> Since the turn of the century, North America's competitive position has dramatically weakened; in 2000, it was the world's largest DAP exporter, but has since been surpassed by China, Saudi Arabia and

[12] CRU International. 2021
[13] The notice of intent for the Dairy Syncline mine project was published in 2010; approval of the project by the federal government occurred in 2020.
[14] World Fertilizer. 2018. March 9, 2018 edition.

> Morocco. Its average annual DAP exports have fallen by 5 million t over this period to less than 2 million t in 2016. **The main driver for this shift has been the decline of its recoverable domestic phosphate rock reserves,** and a structural increase in the value of the merchant rock imports it has sourced to make up this shortfall. The result has been a decade long rationalization in processed phosphate production capacity as US producers have closed non-integrated assets (MissPhos) or shuttered integrated assets where rock mines have reached the end of their useful life (Plant City). The threat is close to existential as single-nutrient phosphate companies face having to leave the phosphate market completely (MissPhos) or look at investing offshore in strategic non-US assets (Mosaic Bayovar/Ma'aden), **given developing future North American assets is prohibitively costly**." [note – emphasis added.]

The Executive Order also states that "it shall be the policy of the Federal Government to reduce the Nation's vulnerability to disruptions in the supply of critical minerals by "…. streamlining leasing and permitting processes to expedite exploration, production, processing, reprocessing, recycling and domestic refining of critical minerals." Streamlining of the permitting process is sorely needed to help reduce the very lengthy approval process and associated high costs.

V. Summary and Conclusions

Phosphate meets the criteria laid in Executive Order 13817 and as such needs to be defined as a critical mineral.

i. Phosphate is a mineral material essential to the economic and national security of the United States. The agricultural economy of the United States and the food security of the American people depend on a secure and resilient supply chain for phosphate nutrients. The actions taken over a century ago by Presidents Roosevelt, Taft and Wilson show how important phosphate is to ensuring that the United States can supply the food needed to sustain our country. That importance has not diminished in the past 100 years.

ii. The supply chain of phosphate is extremely vulnerable to disruption. The domestic production of phosphate has decreased over the past several years while foreign production and imports have increased. The main sources of foreign phosphates are countries that at times might be hostile to the United States (China and Russia) or regions of the world that can be unstable politically (North Africa and the Middle East). Moreover, the U.S. government has found that

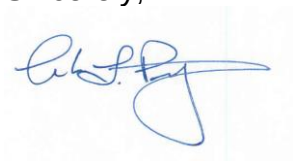
exporters from Morocco and Russia have engaged in unfair trading practices that have harmed the domestic industry. Moreover, Moroccan producer OCP at one point stopped shipping to American farmers simply to make a point that they had enormous market power in the United States. Given these significant supply chain vulnerabilities, the United States needs a source of phosphate that can be depended upon.

iii. Phosphate is an essential material in the manufacture of fertilizers, which is very consequential for the production of food and agricultural related products, such as ethanol. Almost every key crop grown in the United States for human consumption, animal feed, or other uses requires phosphate.

iv. The regulatory process for permitting the mining of phosphate needs streamlining so as to provide certainty and timeliness of the development of phosphate reserves in the U.S.

The J. R. Simplot Company appreciates your consideration of classifying phosphate as a critical mineral. Please contact me at (208) 780-7365 if you have any questions about these comments.

Sincerely,



Alan L. Prouty
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C:
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National Mining Association
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Submitted via E-Planning and e-mail: ***BLM_HQ_GRSG_Planning@blm.gov***

June 13, 2024

Pat Deibert
Bureau of Land Management
National Sage-grouse Coordinator
5353 Yellowstone Road
Cheyenne, WY 82009

RE: Comments on Greater Sage-Grouse Draft Resource Management Plan Amendments and Environmental Impact Statement, 89 Fed. Reg. 18963 (March 15, 2024)

Dear Ms. Deibert,

Please accept these comments submitted by Barrick Gold of North America, Inc. ("BGNA"), and Nevada Gold Mines, LLC ("NGM") (collectively and together with their affiliates,[1] "Barrick") in response to the U.S. Bureau of Land Management's ("BLM") Greater Sage-Grouse Draft Resource Management Plan Amendments and Environmental Impact Statement (DOI-BLM-WO-2300-2022-0001-RMP-EIS) ("Draft RMPA/EIS"), as published on March 15, 2024. 89 Fed. Reg. 18963 (March 15, 2024).

On May 14, 2024, Barrick submitted comments on the proposed Areas of Critical Environmental Concern ("ACECs") and hereby incorporates those comments by reference into this letter (attached hereto as **Exhibit A**). Barrick has previously commented on BLM's Greater Sage-Grouse ("GRSG") resource management plan amendments in 2015 and 2019; Barrick incorporates those comments by reference into this letter (attached hereto as **Exhibit B** and **Exhibit C**, respectively).

On May 13, 2024, Barrick submitted a request for an extension of time to comment on the Draft RMPA/EIS (attached hereto as **Exhibit D**). The BLM failed to respond to that request.

I. INTRODUCTION

As set forth in more detail below, Barrick has serious concerns about several aspects of this rangewide planning process and the Draft RMPA/EIS that BLM has set forth for public review. The agency's overall planning and environmental analysis suffers from lack of coordination with states and critical stakeholders, producing a document that is inconsistent, is unreadable, and ignores the primary drivers of GRSG population and habitat decline. Also, the new approaches to compensatory mitigation, disturbance caps, adaptive management, and lek definitions, to name a few, lack critical scientific support and the impacts analysis is deficient under the National Environmental Policy Act ("NEPA").

[1] Barrick Gold of North America, Inc. is a wholly owned subsidiary of Barrick Gold Corporation.

In Nevada, the consideration of habitat management area ("HMA") delineations, the discussion of the Conservation Credit System ("CCS"), the allocation exception criteria, and lek buffer protocols are deficient and overlook key areas of federal-state coordination. The use of density caps in several states requires further consideration. In Oregon, the one percent-per-decade disturbance rate limitation, plus the inclusion of ACECs and Key Research Natural Resource areas, are not analyzed sufficiently. In Idaho, lek buffer changes are unsupported. Further, Montana's Alternative 5 contains overly restrictive right-of-way ("ROW") provisions. Across the board, the analysis fails to analyze and describe the significant impacts the Draft RMPA/EIS would have on mining, renewable energy, and livestock grazing.

The BLM must prepare a draft supplemental environmental impact statement ("EIS")—preferably, one for each planning area, as it did in the 2015 and 2019 planning efforts—that includes input from the states, state agencies in charge of GRSG populations and habitats, and key stakeholders; adjusts the proposed land use plan amendments accordingly; and addresses deficiencies in the environmental analysis.

II. STATEMENT OF INTEREST

Barrick's interests include several operating mines in Nevada, a reprocessing project in Montana, and exploration targets throughout the western United States, including in Nevada, Montana, Idaho, and Oregon. Barrick is routinely recognized as a world leader in environmentally responsible mining. Barrick is currently named to the Dow Jones Sustainability World Index and the Dow Jones North American sustainability list. For the last fifteen years, Barrick has regularly issued a sustainability report to track its sustainability goals with key performance indicators over four categories: environment and climate change, human rights, social and economic development, and safety.

NGM is a Barrick-controlled joint venture between a BGNA affiliate and Newmont Corporation. It operates the world's largest gold-producing complex in northern Nevada, in addition to several mineral exploration and development projects across thousands of acres of federal public lands. NGM's expansive assets in northern Nevada include ten underground mines, twelve open pits, two autoclave facilities, two roasting facilities, four oxide mills, five heap leach facilities, and numerous exploration projects. NGM employs more than 7,000 men and women at operations across Nevada and in its offices in Elko and Henderson. In 2022, NGM's investment in Nevada alone totaled more than $2.7 billion, including $302 million in state taxes, $1.07 billion in personnel costs, $1.31 billion in goods and services purchased in Nevada, and $17.9 million in community investments.

Although the development of resources often impacts the environment, Barrick believes that careful planning and mitigation can minimize these impacts, often to the net benefit of the natural environment. As part of its modern, responsible approach to GRSG conservation, Barrick has followed the "avoid, minimize, mitigate" hierarchy, even before the 2015 Approved Resource Management Planning Amendments ("ARMPAs"). This approach includes locating facilities to avoid impacts where possible during the design phase; extensive recontouring, revegetation, and other reclamation activities to minimize the impacts that cannot be avoided; and mitigating any residual impacts through Barrick's innovative Bank Enabling Agreement ("BEA") and Nevada's first-in-the-nation mitigation credit system, the CCS. To date, Barrick has completed reclamation and restoration work on thousands of acres of public land in Nevada, with particular emphasis on improving habitat for sagebrush-obligate species, including GRSG. Barrick has also committed $38 million in BEA related spending and is the largest credit developer in the Nevada CCS system. And Barrick's GRSG conservation efforts are not limited

to Nevada, as Barrick applies these same principles to its entire mine project portfolio, including the Golden Sunlight Mine near Cardwell, Montana.

Barrick is an active participant in both Nevada's CCS and Barrick's BEA, which address residual impacts to greater sage-grouse and other sagebrush obligate-species. These programs are mitigation banking systems wherein Barrick preserves and/or rehabilitates habitat to offset disturbance at its project sites. For the BEA, Barrick relies on its science advisor, The Nature Conservancy, and its agency partners—BLM and U.S. Fish and Wildlife Service—to ensure that all actions taken use the best available science for the species it is working to conserve.

Barrick also owns several ranches in areas near its mining portfolio. In Nevada, Barrick is one of the largest owners of private land in the state, including hundreds of thousands of acres of ranchland now used for livestock production that is also recognized as high-value habitat for sage-grouse and other species. Barrick has voluntarily implemented a range of measures on its own lands to benefit sage-grouse, including innovative grazing management techniques, participation in BLM's outcome-based grazing and targeted grazing programs, and restoration of native perennial vegetation on Barrick properties impacted by fire and invasive annual species. Barrick has many years of experience with federal lands to benefit sage-grouse and has developed considerable expertise related to sagebrush ecosystem conservation.

Additionally, Barrick owns and operates a combined 115 megawatt ("MW") natural gas-fired power plant and 1 MW solar facility (Western 102), a 215 MW coal-fired power plant (TS Power Plant)[2], and 130 MW photovoltaic solar facility (TS Solar Plant), which provide electricity to their mining operations. The TS Power Plant and TS Solar facility also provide reactive power to support voltage stability on the regional transmission system through a voltage support agreement with Sierra Pacific Power Company. Barrick's generating facilities rely heavily on transmission and pipeline ROW corridors across federal public lands in order to operate these facilities and to provide bolster reliability across the grid.

With respect to this most recent planning effort, Barrick offers these comments on the Draft RMPA/EIS as it affects land use plans in Nevada, Montana, Idaho, and Oregon, as well as the rangewide aspects of the planning and decision-making BLM is now undertaking.

III. OVERALL PLANNING AND ENVIRONMENTAL ANALYSIS

A. The Draft RMPA/EIS is a step backwards in terms of cooperation and coordination with affected States.

The rangewide approach that BLM is taking in this latest GRSG planning effort, namely, preparation of a single Draft RMPA/EIS that covers 77 separate resource management plans ("RMPs"),[3] is unwieldy and incapable of providing the required level of detail to satisfy NEPA. Moreover, it is inconsistent with BLM's prior land use planning efforts with respect to GRSG conservation. The BLM eschewed a rangewide approach in the 2015 and 2019 ARMPAs in favor of cooperation and coordination with the states to ensure consistent aims, programs, and a shared scientific understanding of threats and solutions specific to each state. The current planning process is a departure from those fundamental principles.

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[2] To advance its sustainability goals, Barrick is currently converting its TS Power Plant from coal-fired operation to a dual fuel process that will require a right-of-way across federal public land.

[3] The Draft RMPA/EIS refers to 76 RMPs in some cases and 77 in others. *Compare* Draft RMPA/EIS, abstract (76), *with* Draft RMPA/EIS, Dear Reader Letter, p. 1 (77).

In 2015, BLM prepared separate EISs for fifteen different planning subregions. These region-specific EISs allowed for more detailed analysis of on-the-ground conditions in and potential impacts to those planning subregions. It also allowed for more effective coordination with state and local governments and public-land users. As BLM explained,

> the specifics of each sub-region necessitated modification of the range of alternatives to accommodate locality and population differences. Therefore, the differences between sub-regional plans are appropriate to address threats to GRSG at a regional level. … The agencies have allowed some inconsistencies among sub-regional plans as a means to address specific threats at a local and sub-regional level and for other reasons as discussed below. Threats affecting GRSG habitat were identified and the intensity of these threats vary by management zones. **Within each management zone, differences in ecological conditions and ecological site potential affect the area's susceptibility to the various threats and its restoration potential. Further, each sub-region has varying local situations.**
>
> Each LUPA/FEIS takes into account consultation with cooperating agencies, local and state governments, and public comments, and addresses diverse and often conflicting interests. Developing the LUPAs involved unprecedented collaboration with state agencies and leadership and were built upon local GRSG conservation efforts initiated by a number of states, including Wyoming's core area strategy, Idaho's three-tiered conservation approach, and Oregon's "all lands, all threats" approach. Where available, state population data and habitat use information were considered in developing management approaches in the LUPAs. **Some states have regulatory measures in place for improved habitat protection, while others rely on voluntary actions**. **These variations were accounted for in the analyses.**

See BLM, Protest Resolution Report Nevada-Northeastern California Sub-Regional Greater Sage-Grouse Land Use Plan Amendment/Final Environmental Impact Statement, pp. 146-47 (Sept. 15, 2015) (emphasis added).

During the 2019 planning effort, BLM issued six EISs that analyzed additional amendments on a state-by-state basis.[4] The purpose of the 2019 amendments was to "bring[] the plans into closer alignment with the individual States' management plans and conservation strategies." Nevada and Northeastern California Greater Sage-Grouse Record of Decision and Approved Resource Management Plan Amendment, p. 1-1 (March 2019). As BLM explained,

> While all changes proposed in the Alignment Alternatives were meant to enhance coordination with respective State plans, variations **reflected the different approaches States are taking within their jurisdictions to conserve GRSG and the BLM's determination that greater flexibility is needed to ensure that each State can manage the habitat within its borders for the particular needs of its landscapes and communities.**

Id. at p. 1-2 (emphasis added). Thus, BLM has previously and repeatedly recognized the need for and value in tailoring the sage-grouse plan amendments—and analyzing the impacts of

[4] The BLM issued EISs in 2018 for Northwest Colorado, Idaho, Nevada and Northeastern California, Oregon, Utah, and Wyoming.

those amendments—on a regional basis rather than in a single document. The BLM's current about-face attempts to address sage-grouse conservation in one rangewide analysis and fails to acknowledge the inherent differences that BLM previously recognized as requiring a more localized approach. The BLM should reincorporate a region-by-region approach into this process.

During the 2019 planning effort, BLM also focused on enhancing cooperation and coordination with the affected states to incorporate appropriate management flexibility and adaptation to better align with state conservation plans. The BLM has pivoted one hundred and eighty degrees with this planning effort by ignoring its state and local partners. Instead, BLM is attempting to impose a uniform set of standards and approaches across ten states and 77 resource management plans without regard to state plans. The BLM could have chosen to evaluate rangewide management provisions on a planning-unit basis as it had done previously. But instead, BLM elected to proceed with a top-down approach for a "west-wide amendment" with inadequate local government and stakeholder input. Draft RMPA/EIS, p. 1-5. The lack of on-the-ground input into the proposed amendments plays out in the Draft RMPA/EIS, as it fails to consider many of the unique issues facing regional sagebrush ecosystems and public land users.

The BLM's analysis concedes that population trends "varied spatially and some areas exhibited evidence of increasing tends in recent decades" and that "[t]here is substantial variation in how GRSG populations fluctuate across space and through time." *Id.*, p. 3-5.[5] This is especially true of populations in the Great Basin and Wyoming that exhibit the most consistent fluctuations, "but with smaller differences between population highs and lows." *Id.* Much of the "new science" that the planning process relies on is also state- or site- specific. Ignoring regional differences does little to accomplish BLM's stated purpose and need for the latest planning efforts; if BLM is going to update RMPs, yet again, it must do so on a state- or region-specific basis.

Threats to GRSG have not changed in Nevada, where the primary drivers of habitat decline are loss of sagebrush through wildfire, invasive species, drought, and loss of riparian areas. *See* Milligan, Megan C., et al., "Greater Sage-Grouse Habitat of Nevada and Northeastern California—Integrating Space Use, Habitat Selection, and Survival Indices to Guide Areas for Habitat Management." U.S. Department of Interior and U.S. Geological Survey, Open File Report 2024-1018 (2024), p. 2. Southern Idaho and eastern Oregon have also suffered huge conversions of native rangeland due to fire and invasive species, not to mention the increase in pinyon and juniper encroachment in all three of these states. *See, e.g.,* BLM, Greater Sage-Grouse Plan Implementation Rangewide Monitoring Report for 2015-2020 (hereafter, "BLM Monitoring Report"), p. A12-20 (The primary factors reducing sagebrush canopy cover in Oregon are historic sagebrush removal projects, sagebrush defoliator moth, wildfire, invasive annual grasses, and western juniper encroachment.") (cleaned up). This planning effort should focus on building more definite federal-state partnerships to address these issues and not on imposing further resource use constraints on industries that drive many

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[5] *See, e.g.,* Gerringer, M.B., K.T. Smith, and K.L, Kosciuch. 2022. "Observations of Greater Sage-Grouse at a solar energy facility in Wyoming." Western North American Naturalist, 82(1): 96-200 (Draft RMPA/EIS, p. 6-14); Kirol, C.P. and B.C. Fedy. 2023. "Using individual-based habitat selection analysis to understand the nuances of habitat use in an anthropogenic landscape: a case study using greater sage-grouse trying to raise young in an oil and gas field." Wildlife Biology, 2023:e01111 (Draft RMPA/EIS, p. 6-18); Walker, B.L. 2022. "Resource selection by greater sage-grouse varies by season and infrastructure type in a Colorado oil and gas field." Ecosphere 13(5): e4018 (Draft RMPA/EIS, p. 6-33).

western states' economies. Without landscape scale projects to rehabilitate these degraded areas, simply increasing regulatory burden and costs on public land users will do little to move the needle for GRSG or their habitat.

B. The most effective solutions to threats posed by anthropogenic disturbance are produced by site-specific dialogue among federal and state regulators and project proponents.

Effective solutions for projects in GRSG habitat are best considered by local partners on the ground, with knowledge of site-specific conditions. NGM's recent Goldrush project in central Nevada provides an excellent example of how the current process in Nevada can work to balance anthropogenic disturbance and conservation needs. The Goldrush project is an underground mine in the NGM Cortez complex, located in Eureka and Lander counties in Nevada. The mining plan of operations was submitted to BLM for review under 43 C.F.R. § 3809 in 2020. A draft EIS was published in June of 2022, a final EIS in October of 2023, and the Record of Decision approving BLM's selected alternative was issued on December 8, 2023. NGM was required to perform compensatory mitigation for the project under either the BEA or the CCS.

Due to the underground design, Goldrush's surface facilities were limited to supporting infrastructure: power lines, roads, vent raises, and water management. But those surface facilities were in a mix of General HMA ("GHMA") and Priority HMA ("PHMA"), with four leks within 2.24 miles. After the Nevada Department of Wildlife ("NDOW") raised concerns about potential impacts to leks from noise and predation associated with construction of the Goldrush project, NGM met with BLM and NDOW biologists at the proposed site. NGM engineers, agency biologists, and agency regulators walked the ground to identify the proposed facility locations, to analyze lek locations and topographical features that were less evident from a two-dimensional map view, and to consider how those features might increase or decrease threats.

After a productive dialogue, NGM was able to present an alternative design to avoid and minimize potential impacts that: (1) moved a powerline off the ridge of the canyon and tucked it beneath the ridgeline to decrease predation, (2) removed a surface paste plant and water treatment facility plus associated infrastructure, significantly reducing truck traffic in and out of the canyon and thereby decreasing noise; and (3) removed a water infiltration facility close to one of the leks by increasing capacity at another facility further away. This "Wildlife Alternative" was evaluated in the Final EIS and ultimately selected by BLM when it approved the plan of operations. NGM also voluntarily agreed to abide by certain RDFs that were otherwise inapplicable to it under the operative resource management plan, such as seasonal restrictions, to limit disturbance to nearby birds. NGM additionally acquired 2,294 credits in the CCS to mitigate its debits, thereby complying with Nevada state compensatory mitigation requirements.

These discussions—the cooperation, on-the-ground knowledge and observation, and technical problem-solving—are where the most effective work is being done to fight habitat and population decline. Where anthropogenic disturbance is concerned, dialogue must continue between BLM, state wildlife agencies, and project proponents; agencies and stakeholders need flexible frameworks to evaluate an array of potential options that may be best suited for one site or another. The proposed plan amendments make it much more difficult for agencies and public land users to make good decisions by presenting solutions in the form of maps that generalize habitat and impacts over six states and that place ACECs on top of existing disturbance.

The BLM's rangewide approach to this challenge stifles these productive conversations and takes a top-down approach to a problem that must be solved from the bottom up. For example, the 2015 Nevada and Northeastern California Approved Resource Management Plan Amendments ("NV/CA ARMPA") Management Decision SSS6 provides that BLM will work with project proponents to limit project-related noise "[w]here it would be expected to reduce functionality of habitats that support associated GRSG populations." Likewise, Management Decision SSS 10 provides that "[w]hen necessary or as new data becomes available, site-specific NEPA analysis on use authorizations in PHMA and GHMA will include project level adaptive management responses to address changed conditions in GRSG habitat and population trends." These aspects of the existing land use plans ensure the federal agency and project proponents have guidelines for desired outcomes but have the flexibility to achieve those outcomes in a manner best suited for the site, the particular bird populations, and the project developer. BLM's Draft RMPA threatens to remove a meaningful portion of that discretion.

C. The Draft RMPA/EIS must include language that recognizes the Barrick's Bank Enabling Agreement.

A particularly important aspect of the existing land use plans that must be maintained is Management Decision Mineral Resources 18 (MD MR 18), which expressly acknowledges that actions taken under the Barrick BEA are consistent with the amendments.[6] Table 11 in Appendix 2.12 of the Draft RMPA/EIS indicates that this management decision is "subject to change" under Alternatives 3 through 6, though it is unclear what those changes may be since MD MR 18 is not referenced in the main text of the document. The language of MD MR 18 should be retained, and additional language added to the end of the provision that states:

> ("BEA"), which is applicable to the area covered by the BEA, wherein BLM will calculate impacts and evaluate voluntary proponent-developed mitigation options in accordance with that Agreement.

Through the BEA, Barrick works with the Department of the Interior and The Nature Conservancy to facilitate GRSG conservation actions while incorporating those conservation actions into subsequent decisions by BLM and USFWS. This voluntary and industry-leading project establishes the Barrick Nevada Sage-Grouse Bank and directs specific action as to Barrick's use, operation, and maintenance of that Bank. The Bank Property encompasses approximately 238,192 acres in Eureka and Elko counties, Nevada. Within the Bank Property are 189,005 acres of public land administered by BLM and 49,187 acres of privately owned land managed by Barrick.

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[6] MD MR 18 in the 2015 NV/CA ARMPA provides: "Subject to valid existing rights and applicable law, authorize locatable mineral development activity, by approving plans of operation and apply mitigation and best management practices that minimize the loss of PHMAs and GHMAs or that enhance GRSG habitat by applying the "avoid, minimize and compensatory mitigation" process through an applicable mitigation system, such as the Nevada Conservation Credit System and exemplified in the Barrick Nevada Sage-Grouse Bank Enabling Agreement (March 2015)."

MD MR 18 in the 2019 NV/CA ARMPA provides: "Subject to valid existing rights and applicable law, authorize locatable mineral development activity, by approving plans of operation and apply mitigation and best management practices that minimize the loss of PHMAs and GHMAs or that enhance GRSG by applying the mitigation strategy outlined in MD MIT 1 and exemplified in the Barrick Nevada Sage-Grouse Bank Enabling Agreement (March 2015)."

The BEA compensates for impacts to the GRSG and sagebrush ecosystem by allowing Barrick to engage in activities that produce a net conservation gain. The BEA provides Barrick with assurance that the voluntary compensatory mitigation measures taken by the company (considering the application of best management practice for practical avoidance and minimization of impact to GRSG by its operations), will be accounted for by BLM and the USFWS as the agencies review Barrick's proposed operations that may impact GRSG and its habitat. Since its creation, Barrick has successfully used the BEA to create and release credits to mitigate the impacts of mining projects on public lands. Barrick has posted $57 million dollars in bonds to ensure its performance of the public and private land projects under the BEA. Barrick has committed approximately $38 million to date on conservation projects under the BEA and has treated approximately 28,089 acres. Given these significant investments, it is critical that BLM continues to recognize the BEA.

D. The Draft RMPA/EIS is borderline unintelligible and riddled with internal errors and inconsistencies.

The Draft RMPA/EIS is a textbook example of over-papered governance-by-confusion. The 2,400+ page document, in addition to the thousands of pages of cited studies and gigabytes of mapping shapefiles, are enough to baffle even seasoned biologists and public reviewers. Understanding the potential array of planning features for each alternative is impossible and the document's structure is a barrier to meaningful comprehension and dialogue. The BLM cannot expect meaningful, substantive comments on a plan that is so difficult to understand. And BLM did not respond to the many requests for extension of the comment period (including by Barrick and industry groups), further exacerbating the problems.

1. It is unclear which parts of the plans are being amended and which remain the same.

First, BLM chose to proceed with this planning process by only amending certain aspects of the existing plans; the document identifies a slew of rangewide management actions (Draft RMPA/EIS, p. ES-2) and topics carried forward from scoping for consideration (*Id.*, p. ES-3), and then notes that:

> The RMPA is not reconsidering all existing GRSG management actions from the 2015 RMP Amendments and revisions or the 2019 RMP Amendments. Management actions in the existing RMPs that do not need to be changed to meet GRSG conservation goals will not be considered for amendment and will remain unaltered in existing RMPs (see Appendix 2 for the list of existing RMP goals, objectives, and management actions from each state, and which are being considered for amendment).

Id. For example, Appendix 2 contains a series of tables and acreage charts, some from 2015 and 2019, and some noting where goals, objectives, and management actions may be altered by alternatives. But instead of identifying how each alternative proposes to change those management actions in the same table, the tables simply say, "[p]otential change under Alternatives 3, 4, 5, and 6," (*see*, e.g., Draft RMPA/EIS, App'x 2, Table 11, p. 2-NVCA-14) leaving it up to the reader to determine what the changes are and where they are located in the 2,400-page document. *See also id.*, Sections 2.2 (Idaho RMPs), 2.3 (Billings MT RMP), 2.4 (Butte MT RMP), 2.5 (Dillon MT RMP), 2.6 (HiLine MT RMP), 2.7 (Lewistown MT RMP), 2.8 (Miles City MT RMP), 2.9 (Upper Missouri Breaks National Monument MT RMP), 2.13 (Oregon RMPs). Having attempted to do so, Barrick can confirm that the review is uncertain, imprecise,

and confusing. The BLM cannot realistically expect even sophisticated operators, much less an ordinary public reviewer, to comprehend the Draft RMPA/EIS in its current form. The BLM must clarify how these changes will fit into the parts of the existing plans that are not being amended.

2. BLM did a poor job conveying the complex and interconnected information for this planning process.

In addition to the issues outlined above, the Alternatives charts in Section 2.5 of the Draft RMPA/EIS are nearly impossible to understand. The charts broadly cross-reference other portions of the document, including maps, tables, appendices, and studies, without including the essential text or concepts from those documents. *See, e.g.,* Draft RMPA/EIS, Table 2-5, Comparison of Alternatives, Mitigation, Alternatives 3 through 6 (citing to Appendix 7, BLM's Mitigation Handbook, "other mitigation related BLM policy, as well as CEQ regulations," and stating that "[c]ompensation may also be required by state regulations" without further discussion); Table 2-12, Comparison of Alternatives, Livestock Grazing, Alternative 4, ("During the land health assessment (LHA) process, use the criteria identified in the Sage-Grouse Habitat Assessment Framework (BLM-TR-6710-1) – Stiver et al. 2015 – as revised and other BLM approved methodology to provide multiple lines of evidence (which are consistent with BLM Manual 1283) … referencing appropriate ESD, associated State and Transition Model (STM) and existing ecological condition information. , [*sic*] For GRSG, the standard would generally be met when vegetation conditions provide for suitable or marginal GRSG habitat at the HAF site scale (see Table 8-1, Appendix 8)…").

The incomprehensibility of this section is concerning because NEPA requires that the public is adequately informed about the proposals under consideration. NEPA's "understandability" requirement, as interpretated by the Ninth Circuit Court of Appeals, demands that "an EIS must be organized and written so as to be readily understandable by governmental decisionmakers and by interested non-professional laypersons likely to be affected by actions taken under the EIS." *Or. Envtl. Council v. Kunzman*, 817 F.2d 484, 493 (9th Cir. 1987). "[T]he EIS's form, content and preparation [must] foster both informed decision-making and informed public participation." *Id.* at 492; *see also Colorado Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1172 (10th Cir. 1999) (same).

The charts presented in Section 2.5 of the Draft RMPA/EIS are "not presented concisely nor in one document or location," and "include[] a considerable overlay of direction from" different plan amendments. *Cal. ex rel. Lockyer v. U.S. Forest Serv.*, 465 F. Supp. 2d 917, 924 (N.D. Cal. 2006) (finding that a Forest Service FEIS for a resource management plan violated NEPA under *Kunzman*). This lack of clarity is undoubtedly a recipe for conflict between the agency and project proponents because it would "bestow[] unfettered discretion" on BLM to interpret what management decisions apply when key information is scattered throughout the Draft RMPA/EIS and prior plan amendments. *See id.* Considering how complex this area of land management is to begin with, BLM needs to remedy this critical issue.

The BLM also failed to provide critical documents that were needed to understand the Draft RMPA/EIS until late in the comment period. For example, the information from the virtual and physical public meetings were not uploaded to BLM's website until the last public meeting was complete. Attendees at the public meetings were unable to review what BLM had presented and discussed at prior meetings and develop more nuanced questions for those assemblies. Further, the United States Geological Survey ("USGS") model for Nevada was not uploaded to the website until 21 days were left in the comment period (and the document was

uploaded the Friday before the Memorial Day holiday). Even with these errors and omissions, BLM inexplicably refused to extend the public comment period.

3. The Draft RMPA/EIS is internally inconsistent and contains errors.

The document is also internally inconsistent, especially as to what issues it purports to carry forward into the analysis. For example, BLM says that "changes to existing wildland [fire] and invasive species management will not be considered." Draft RMPA/EIS, p. 1-10. Later in the document, however, BLM specifically proposes updates to Fire and Vegetation Actions in the Nevada/Northeastern California RMP. *Id.* at p. 2-169. The document also says that compensatory mitigation must be completed prior to initiating the activity causing the need for compensation for Alternatives 3 through 6 (*Id.*, p. 2-22), but the disturbance cap summary table (Table 2-7) states that mitigation under Alternatives 5 and 6 would not need to be functioning prior to the new disturbance (pp. 2-34 through 2-36). These are two very different requirements. The document additionally says that "[u]nder Alternative 3, all PHMA would be managed as ACECs" (p. 4-25), which is inconsistent with the rest of the document's text and mapping – if this is not an error, BLM's analysis is completely deficient. These are important, substantive elements of the plan that have been haphazardly described.

As a further example, the Draft RMPA/EIS summary table (Table 2-3) states that locatable minerals management would be the same in Alternative 5 as Alternative 4 in PHMA, and same as Alternative 1 in GHMA. *See* Draft RMPA/EIS, pp. 2-16, 2-18, 2-164. But the Table is blank for locatable minerals for Alternative 4 except for pointing out one area of Montana that is already withdrawn. *See id.*, p. 2-16. The Draft EIS text later attempts to clarify this by stating that Alternative 4 would "not recommend any areas for withdrawal from mineral entry." *See id.,* p. 4-110. But then the Alternative 4 map further confuses the issue by showing most HMAs (including GHMA) throughout the State of Idaho as recommended for mineral withdrawal. *See id.*, App'x 1, Map 2.35a. In addition, the Alternative 5 and 6 maps show "recommended withdrawals" in small areas of northeast Montana, central and southern Idaho, northern Nevada, and central Wyoming. *See id.*, App'x 1, Maps 2.35a, 2.36a, 2.37a. No narrative explanation in the Draft RMPA/EIS is given for these inconsistencies.

Inexplicably, the mapping data published by BLM is replete with errors. Most concerning of these errors is a layer in Alternatives 4 and 5 that recommends the withdrawal of significant portions of the rangewide planning area from entry and location under the mining laws. But this mapping conflicts with the text of the Draft RMPA/EIS, which explains that Alternatives 4 and 5 "would not designate any SFAs and would not recommend any areas for withdrawal from mineral entry." Draft RMPA/EIS, p. 4-110. The mapping data also includes ACECs layers in Alternatives 4 and 5—this appears to be an error because only Alternatives 3 and 6 are supposed to contain ACECs.

Finally, the Draft RMPA/EIS is replete with typographical errors, compounding the effect of inconsistencies and the overall lack of clarity of the document. One can only assume that these mistakes and slip-ups are a product of a hurried process to get the document to publication. But this assumption further speaks to the lack of serious deliberation in creating and analyzing the alternatives presented, management actions considered, and the purpose and need for this latest planning effort. The BLM should not move forward with a plan amendment that is this undercooked.

4. If BLM is going to "mix and match" pieces of alternatives for its final decision, even further supplemental environmental analysis will be necessary.

Beyond the issues with the overall structure and accuracy of the Draft RMPA/EIS, there is significant uncertainty as to what BLM's approved management approach might be. The BLM forebodingly warns the reader that it "has the discretion to select as a Proposed RMPA, an alternative or set of state-specific alternatives that uses an alternative in its entirety or to combine aspects of the various alternatives presented in this Draft RMPA/EIS." Draft RMPA/EIS, p. 2-7. The final decision "may also vary by state to address circumstances that vary between the states." Id. The Alternatives should have been presented as separate, wholistic solutions to best allow the public to vet—and comprehend—each proposal. The potential for a "mix-and-match" outcome also frustrates the public review and comment process. In total, BLM is proposing to amend thirteen specific land use allocations, resource objectives, and management actions across six Alternatives, in addition to several state-specific updates—the number of "mix-and-match" outcomes is exceptionally high.

The BLM has presented many potential adjustments to the resource management plans in the alternatives that could have different effects depending on how they are assembled. For example, if BLM were to select Alternative 5's approach to adaptive management, but Alternative 1's approach to allocation exception criteria, a situation could arise where increasingly rigorous adaptive management thresholds are met and developers of important project have no opportunity to obtain an exception, even where ground-truthing shows that such an exception is warranted. Or BLM could select the HMA boundaries from Alternative 5 but impose the restrictions of Alternative 3 in areas identified as PHMA. The potential combinations of management approaches are infinite; if BLM decides to choose a "mix and match" alternative, it should publish a supplemental draft EIS that analyzes the potential impacts and synergistic effects of the adopted approaches.

E. The Draft RMPA/EIS ignores the primary driver of GRSG habitat loss: wildfire and invasive species.

This planning effort fails to address the primary threats to GRSG populations and habitat: wildlife and invasive plant species proliferation. Scientific studies, including BLM's comprehensive rangewide monitoring study, have identified "wildfire [as the] primary driver of sagebrush habitat loss." BLM Monitoring Report, p. 31; Draft RMPA/EIS, 4-25 (citing study that shows that "wildfire was the cause of the majority of habitat loss between 2012 and 2018."); 4-231 ("Wildfires result in the greatest direct loss of GRSG habitat and have been widely distributed in terms of frequency and severity"). The Draft RMPA/EIS similarly recognizes that "[t]he spread and prevalence of invasive plant species contributes to increasing wildfire frequency and size." Draft RMPA/EIS, p. 4-231. The science on these issues has not changed, yet the Draft RMPA/EIS proposes several new management restrictions on anthropogenic activities that only minimally impact GRSG. Indeed, by BLM's own account, rangewide anthropogenic disturbance increased by only 0.03% between 2015 and 2020. The BLM Monitoring Report, p. viii.

When asked during scoping whether BLM would consider management strategies that would limit the vast acreages of GRSG and sagebrush habitat lost to wildland fire and invasive species, BLM responded that "reviewing existing wildland fire and invasive species RMP management actions, in the context of the new literature, existing wildland fire and invasive species management action [sic] are sufficient for RMP-level decision-making, and no changes

need to be considered." Draft RMPA/EIS, p. 1-10. Nevertheless, the Draft RMPA/EIS identifies that "[s]ixteen adaptive management habitat triggers were tripped between 2015 – 2020, mostly the result of sagebrush loss to wildfires." *Id.*, p. 1-3. Wildfire accounted for approximately 72% of the sagebrush loss in both the Great Basin and Rocky Mountains subregions and represents the largest driver of sagebrush loss in the Great Basin Region (87% of the loss in the Great Basin was from wildfire). The BLM Monitoring Report for 2015–2020, p. vii.

Had the agency undertaken a more local or even regional approach to this planning process, state agencies, communities, tribes, and other key stakeholders would have had the opportunity to convey to BLM that, in many cases, managing wildfires and invasive species proliferation comes down to funding partnerships for fuels management. Certainly, the resources used in preparing the Draft RMPA/EIS would have been better spent on fuels management, wildfire preparedness, and suppression.

The prior land use plan amendments in 2015 had been driven largely by the 2011 report of the National Technical Team (NTT). That report had been widely criticized for being too narrowly focused on limiting anthropogenic disturbance rather than addressing the acute habitat threats from wildfire and invasive species. Practical participants in the GRSG dialogue recognize that the most significant threat to GRSG in the Great Basin region is habitat loss from fire and invasive species. The state of scientific understanding regarding GRSG and sagebrush ecosystem conservation does not support fixed, precise numeric thresholds for management of incremental impacts of development activities. Further, the seemingly precise thresholds proposed by the NTT report misleadingly implied they would be effective conservation tools when, in fact, fire and invasive species play a much larger role in the fate of the sagebrush ecosystem and the GRSG.

Federal agencies need adequate tools and funding to address habitat loss from wildfire and invasive species. Instead of focusing resources there, BLM has again defaulted towards adopting arbitrary and potentially ineffective limits on human activities. The combination of the revised disturbance cap calculation, combined with new restrictions on grazing, energy, and mineral development place the focus overwhelmingly on anthropogenic disturbance, the smallest part of the problem, with no acknowledgement of advancements in wildfire management, protection of intact public or private habitat, or restoration or rehabilitation of GRSG habitat. The opportunities for compensatory mitigation, which may include mitigation banking, are further reduced when they should be expanded.

The BLM has premised this planning effort on "new science and information," but the "new science" since the 2019 planning process is limited. Of the 472 sources cited in Chapter 6, 37 new substantive studies or articles have been included. Upon reviewing BLM's use of these additional sources in the Draft RMPA/EIS, it becomes clear that they are mostly being used to bolster older studies. *See, e.g.*, Draft RMPA/EIS, p. 2-28. ("Ninety-nine percent of active leks occurred within landscapes that were less than 3% developed in a landscape analysis of GRSG (Knick et al. 2013) and a follow-up study on disturbance from existing energy infrastructure and human activity supported those findings (Kirol et al. 2020)."); p. 2-99 ("GRSG are a prey species and face a suite of non-specialist predators across their range (Hagen 2011, USFWS 2023)."); p. 3-9 ("Because GRSG population abundance is positively related to mesic availability (Donnelly et al. 2016, 2018), weather-driven productivity has been identified as a key factor influencing GRSG survival (Blomberg et al. 2013; Guttery et al. 2013; Donnelly et al. 2018)."). None of these sources appear to justify the expansive rangewide planning effort that BLM has chosen to engage in – instead, they should have been used to update the regional amendments on a plan-by-plan basis.

F. The Draft RMPA/EIS does not comply with the Mining Law or the Federal Land Policy and Management Act.

The Draft RMPA/EIS does not adequately recognize the full extent of locatable mineral rights granted by the federal mining laws. As published, the Draft RMPA/EIS includes provisions designed to recognize "valid existing rights"[7]—the minimum protection afforded by the Constitution and the Federal Land Policy and Management Act ("FLPMA")—and occasional references to the Mining Law of 1872. However, rights under the mining laws are not limited only to valid existing rights and the Draft RMPA/EIS confuses the interplay between Section 202 of FLPMA (requiring land use plans) and Section 302(b) (limited application of FLPMA to locatable minerals).

The Mining Law of 1872 allows enterprising U.S. citizens to enter onto federal public lands that are open to location to explore, discover, and develop valuable mineral deposits. *See* 30 U.S.C. § 22. The Mining Law guarantees both pre- and post-discovery rights of access, use, and occupancy, with or without a mining claim or "valid existing rights"; management actions that prohibit or unduly burden such rights are contrary to these rights. Indeed, such rights were affirmed by Congress when it enacted FLPMA. Congress was careful to specify that FLPMA did not "amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress," except as specifically enumerated in Section 302(b).

Section 302(b) of the Federal Land Policy and Management Act ("FLPMA") states:

> Except as provided in section 314 [recordation of mining claims], section 603 [wilderness study areas], subsection (f) of section 601 [California Desert Conservation Area] of this Act and the last sentence of this paragraph [prevention of "unnecessary or undue degradation"], no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of locators or claims under that Act, including, but not limited to rights of ingress and egress.

43 U.S.C. § 1732(b). The enumerated provisions of FLPMA that amend the mining law does *not* include Section 202, the planning provisions. In fact, Section 202 (e)(3) states explicitly that though withdrawals under Section 204 may be made to achieve management decisions identified in land use plans, "lands may be removed . . . from operation under the Mining Law of 1872 . . . only by withdrawal action subject to Section 204." 17 U.S.C. § 1712(e)(3). BLM may not use land use plans to create de facto withdrawals that effectively close public lands to exploration or mining.

The limited application of land use plans in this context is also recognized in BLM's locatable mineral surface management regulations. *See* 43 C.F.R. § 3809.5 (defining "unnecessary or undue degradation"). The duty to prevent "unnecessary or undue degradation" is narrowly defined as ensuring compliance with the performance standards in 43 U.S.C. § 3809.420, confirming that activities on mining claims are "reasonably incident" to prospecting,

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[7] The 2015 NV/CA ARMPA defines "Valid existing rights" as "Documented legal rights or r interests in the land that allow a person or entity to use said land for a specific purpose and that are still in effect. Such rights include fee title ownership, mineral rights, rights-of-way, easements, permits, and licenses. Such rights may have been reserved, acquired, leased, granted, permitted, or otherwise authorized over time."

mining, or processing operations, and monitoring for compliance with state levels of protection or reclamation required by specific laws. *Id.* The referenced performance standard for compliance with land use plans contains the important limiting language "consistent with the mining laws…" 43 C.F.R. § 3809,420(a)(3).

To be consistent with FLPMA and the mining law, the Draft RMPA/EIS needs to recognize rights under the mining law in addition to other "valid existing rights" (a broader category than just mining rights). In the current Nevada RMPA, this is implemented by exempting "non-discretionary actions" (which include activities permitted under 43 C.F.R. Subpart 3809) from certain standards and design features. This language has caused some confusion and should be more clearly stated. *See Bartell Ranch, LLC v. McCullough*, 3:21-cv-00080-MMD-CLB (D. Nev., Aug. 11, 2022) (ECF No. 270, p. 11-15) (rebutting arguments over applicability of certain RDFs and management decisions to locatable minerals projects); *see also Bartell Ranch LLC v. McCullough*, No. 3:21-CV-00080-MMD-CLB, 2023 WL 1782343, at *9-10 (D. Nev. Feb. 6, 2023). The RMPA should specifically exclude all activities permitted under the 3809 regulations, including casual use exploration and notice level activities, from provisions which could indirectly close lands to exploration and mining (e.g., the disturbance cap, lek buffers, etc.). Operators may still comply with standards where possible to avoid or minimize impacts, as explained in our discussion of review and approval of the Goldrush Mine plan of operations. But BLM may not use the ARMPA provisions to block otherwise permissible exploration or mining operations. These same legal limits apply to any proposed ACEC's as the authority for designation and management of ACECs derives from FLPMA Section 202.

G. The Draft RMPA/EIS lacks serious inquiry into impacts to locatable minerals projects and generally.

As explained above, BLM has made a significant and ill-advised departure from prior planning efforts by considering amendments to seventy-seven resource management plans in a single document. The rangewide approach not only misses the mark on addressing local habitat conditions and populations through tailored management actions, but it also means the Draft RMPA/EIS is devoid of any real substantive impacts analysis and is loaded with conclusory suppositions, especially in its description of impacts to locatable minerals projects. This constitutes a clear violation of NEPA, and BLM must remedy its errors. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (NEPA "ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts [and] that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast."); *Earth Island Inst. v. Muldoon*, 82 F.4th 624, 631 (9th Cir. 2023) ("NEPA 'requires federal agencies to take a "hard look" at the environmental consequences of their actions' and to explain their decisions to the public."); *Sierra Club v. FERC*, 867 F.3d 1357, 1368 (D.C. Cir. 2017) ("An EIS is deficient, and the agency action it undergirds is arbitrary and capricious, if the EIS does not contain sufficient discussion of the relevant issues and opposing viewpoints, or if it does not demonstrate reasoned decisionmaking.") (internal citations omitted).

1. Sagebrush Focal Area withdrawals and the current planning process are connected actions and must be analyzed together.

The BLM has failed to consider the interplay between the ongoing consideration of withdrawals of Sagebrush Focal Areas ("SFAs") and additional mineral withdrawals that might be recommended in the Draft RMPA/EIS. The BLM deferred questions on SFAs and mineral withdrawals in its public meetings, indicating that a separate draft EIS was being completed that

considers potential withdrawal of the SFAs recommended for withdrawal in the 2015 ARMPAs, with publication anticipated later this year. These two processes are clearly connected actions but BLM chose to ignore the potential effects of the SFA withdrawals (direct, indirect, and cumulative) in the Draft RMPA/EIS. *See Sierra Club v. Bureau of Land Mgmt*., 786 F.3d 1219, 1225–26 (9th Cir. 2015) (actions are connected when one may not reasonably be completed without the existence of the other); *see also* 40 C.F.R. §§ 1501.9(e), 1502.4(a).

As noted in the Draft RMPA/EIS (pp. ES-7, 4-5), this planning process may recommend additional withdrawals. The BLM should not have included withdrawal of lands from mineral entry as part any of the alternatives where the EIS does not evaluate the potential impacts of recommending those withdrawals. The BLM cannot put that analysis off until later NEPA documents. Mining activities have only a minor impact on GRSG habitat throughout the proposed withdrawal area, and devastating economic and social impacts would result in states with significant mining exploration and operations. The BLM can accomplish its GRSG conservation goals through a variety of other land-management decisions shy of withdrawal, without the drastic step of eliminating mineral exploration and mining from a significant portion of the western United States.

Further, BLM's decision to continue to proceed with a proposal to withdraw the SFAs under the 2015 ARMPA when this planning effort may result in the selection of an alternative that has no SFAs raises more questions than answers. It is unclear if BLM will abandon that other effort if an alternative with no SFAs is chosen, and if it does not, what the legal basis for proceeding with that analysis will be. The link between the alternatives and SFA's (or different withdrawals) should be explicit so that the public can evaluate the differences among alternatives. Recommending withdrawals of the magnitude proposed under Alternatives 1, 3, and 6 conflict with FLPMA's multiple use mandate (which includes direction to manage public lands "in a manner which recognizes the Nation's need for domestic sources of minerals," 43 U.S.C. § 1701(a)(12)), Section 22 of the General Mining Law, and the Mining and Minerals Policy Act.

2. The BLM's locatable minerals impact analysis is insufficient under NEPA.

Chapter 4 of the Draft RMPA/EIS contains only a short section on impacts to locatable minerals projects and focuses primarily on the "likely environmental effects should the Secretary propose and make a withdrawal in the future." *See* Draft RMPA/EIS, pp. 4-106 through 4-110. The Draft RMPA/EIS characterizes "[r]ecommending areas for closure to the mining laws for locatable exploration or development" as "not hav[ing] any impacts." *Id.*, 4-106; App'x 18, p. 18-6. This is patently false—even the suggestion of a potential withdrawal threatens the economic stability of mining by chilling investment and disturbing regulatory certainty. Moreover, the mineral validity examination that occurs for existing projects during a withdrawal "can take several years in some case" and "operators are required by regulation to pay the cost of BLM's verification." *Id.*, p. 4-106. These impacts would be acutely felt by Barrick and the western hard-rock mining states. *See id*., App'x 13, Table 3-4 and -5.

With respect to the impacts of the proposed alternatives on locatable minerals projects, generally, BLM's discussion of the seriousness of these impacts is insufficient to the point that it fails to satisfy NEPA. The BLM's cursory analysis of impacts to locatable minerals merely notes that:

> market and nonmarket impacts from changes in locatable minerals extractions are likely to occur over the long term. This could result in some mining companies closing or moving operations to other locations. The economic and social impacts would likely last until the displaced mining workforce is able to gain employment with other companies or in other industries; however, if the workers are required to leave the area to find employment, then the social and economic impacts in the regions that were dependent on mining could last longer.

Draft RMPA/EIS, p. 4-131. The Draft RMPA/EIS identifies these "market" impacts as "changes in direct and secondary jobs, income, and economic output, tax revenue, and public services and infrastructure," *Id.*, p. 4-130, and the "nonmarket" impacts as "direct changes to lifestyles and culture, especially for those who rely on the mining industry for employment and income and those in mineral communities of interest," *Id.* at p. 4-131. But these impacts would be significant enough that entire workforce populations would be displaced, crippling regions that rely on mining for reliable, high-paying jobs. Rural communities would experience most of the impact to the point that entire communities would no longer be viable—a far cry from understated "direct changes to lifestyle and culture." The Draft RMPA/EIS also does not undertake any thoughtful evaluation of the magnitude of these impacts, in terms of affected jobs or economic output, despite collecting baseline data on employment and economic output (Appendix 13). *See* Draft RMPA/EIS, App'x 18 (analyzing impacts to jobs and economic output for fluid minerals and grazing).

Indeed, "[t]he average labor income for [the mining industry in Nevada] (over $110,000 in [Humboldt, Pershing, and White Pine counties]) is almost double the average state income across all employment sectors." Draft RMPA/EIS, App'x 13, 13-2-15. These high-paying jobs are critical to supporting rural Nevada families and have a ripple effect on the entire state's economy. *See* Draft RMPA/EIS, p. 3-47 ("In addition to the public services supported by locatable minerals, hard-rock mining jobs tend to be some of the highest paying jobs in rural communities, especially in Nevada."). Last year alone in Nevada, Barrick contributed $25.8 million to education, provided 6,860 jobs, loaned $10.1 million to businesses, subsidized $4.6 million towards childcare, supported 88 small businesses, paid $5 billion to state suppliers and paid $8.4 million in healthcare expenses. *See* Barrick Sustainability Report 2023, p. 31. Like other mining operators in Nevada, Barrick pays net proceeds tax, sales and use tax, the Gold and Silver Excise Tax (otherwise known as the "Mining Education Tax"), property taxes, and the modified business tax. These funds and other economic activities are all critical to powering not only rural communities, but the statewide economy. Restrictions on mining in GRSG habitat beyond those already imposed will be felt by Barrick, but also across the state.

In total, the Draft RMPA/EIS makes no attempt to seriously analyze the potential economic impacts to locatable minerals projects. For instance, the Draft RMPA/EIS must analyze how disturbance cap calculations and adaptive management changes impact realty actions that may be necessary to support mining operations (e.g., renewable energy facilities and transmission ROWs). The Draft RMPA/EIS should also evaluate how new HMA alignments or ACECs could impact existing operations, including expansion of mining operations. These issues are just a few of the important analyses BLM has omitted from this document, and the failure is emblematic of BLM's "mile wide, inch deep" approach in this planning process. Such a paltry attempt at an impacts analysis plainly violates NEPA's "hard look" requirement. *See* 490 U.S. at 350 (*quoting Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)).

3. The BLM's overall impacts analysis is insufficient under NEPA.

The BLM's analysis of impacts throughout the Draft RMPA/EIS is inadequate under NEPA. For instance, the Draft RMPA/EIS does not examine how shifting the disturbance cap area of analysis from biologically significant units ("BSUs") to the Habitat Assessment Framework ("HAF") fine-scale area and rangewide adoption of a single adaptive management framework will have synergistic effects on resource uses. Some regions may be immediately impacted by new disturbance caps or adaptive management thresholds, but BLM does not specify how close any of the areas are to exceedance or triggers under its new proposed framework. The Draft RMPA/EIS would also place HMA and ACECs over disturbance that, in some cases, has existed for over thirty years. These potential impacts must be analyzed and disclosed for each alternative and for each resource topic in each local unit.

The Draft RMPA/EIS's cumulative effects analysis is similarly wrong. The entire section on cumulative effects—spanning ten states, seventy-seven RMPs, and hundreds of existing and proposed projects (Appendix 14)—is only forty pages. Draft RMPA/EIS, pp. 4-228 through 4-268. *Id.* The BLM tries to overlook the serious inadequacy of the cumulative effects analysis in the Draft RMPA/EIS by listing past, present, and reasonably foreseeable future actions in Table 14-1 in Appendix 14. But the information contained in that document is a far cry from any real analysis—it is merely a list of projects with a description and their status. *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt*., 387 F.3d 989, 993–94 (9th Cir. 2004) ("A proper consideration of the cumulative impacts of a project requires 'some quantified or detailed information' [and] 'must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future projects.'") (internal citations omitted). For many resources, the cumulative effects analysis does not even reference Table 14-1 or the projects identified therein.

IV. TECHNICAL CONCERNS

The following comments address technical adjustments proposed in Alternatives 3 through 6 (collectively, the "New Alternatives"). While some comments may not be applicable to each Alternative, an attempt is made, where applicable, to identify the relevant Alternative(s).

A. The Draft RMPA/EIS proposes unnecessary changes to compensatory mitigation that could disrupt functioning state mitigation systems.

The Draft RMPA/EIS correctly recognizes that compensatory mitigation is not required under federal law for operations conducted under the Mining Law of 1872. Draft RMPA/EIS, p. 2-24. Still, several states require compensatory mitigation to offset anthropogenic disturbance projects, including Nevada's CCS. Similarly, Montana imposes a compensatory mitigation requirement that may be fulfilled through the purchasing of conservation credits or paying into the state's "Sage Grouse Stewardship Account," which is a state fund primarily for projects that generate compensatory mitigation credits. *See* Montana Code § 76-22-111(1)(b); *see also* Montana Mitigation System Policy Guidance Document for Greater Sage-Grouse, at 3, 51 ("Montana Mitigation Policy"); Montana Executive Order 12-2015, Attachment A. Oregon also uses a credit system and in-lieu fee fund for fulfilling GRSG compensatory mitigation requirements. *See generally* State of Oregon, Greater Sage-Grouse Habitat Mitigation Program Operations and Administration Manual (Oct. 2019) ("Oregon Mitigation Policy").

Accordingly, project proponents depend on a well-functioning, state-wide system that encourages accessible and affordable credit projects. But BLM's analysis fails to address any of

these state mitigation systems in detail—Nevada's CCS is mentioned only once in the Draft RMPA/EIS, with a cursory citation in the cumulative analysis section (p. 4-229), and Montana and Oregon's credit systems are not discussed at all. This is problematic because the potential impacts on state mitigation systems would be significant if BLM implements its proposed changes in the New Alternatives. This omission is yet another example of where BLM has failed to engage with state interests and key stakeholders, putting forth a document that could undermine meaningful habitat preservation and enhancement programs that have been in place for nearly eight years. The BLM must engage with these state and local partners to ensure that the changes proposed by this Draft RMPA/EIS at minimum do not undermine these existing efforts and, at best, align with state-mandated mitigation programs.

1. Requiring compensatory mitigation to be within the same area of the impact is not feasible and conflicts with BLM's own policies.

Under the New Alternatives, BLM is proposing to require that "[c]ompensatory mitigation should … be prioritized to occur within the same area of the impact (within the same HAF fine scale area, or if not possible, within the same neighborhood cluster or HAF mid-scale area where practicable) so that it provides habitat for GRSG populations affected by the project." Draft RMPA/EIS, p. 2-22. Barrick's experience in implementing state mitigation systems shows that this proposal is severely flawed.

To begin, the new proximity requirement overlooks the fact that land for mitigation activities may not be available near—i.e., within the same HAF fine-scale, neighborhood cluster, or HAF mid-scale—disturbance projects. In Nevada, there are very few areas where landownership and habitat conditions align to enable credit work to be performed. Due to the vast amount of federally managed public land in Nevada, paired with mixed-ownership limitations in historic checkerboard areas, the CCS already struggles to find suitable habitat for credit projects. Accordingly, there is significant demand for the limited supply of credits available in the system, and competition for credits drives up their price. If BLM were to implement this proposal, there simply would not be suitable private land located near disturbance projects to generate credits, as third-party landowners would be discouraged from participating in state mitigation systems or banks if they are not located near disturbance projects.[8]

The requirement also encourages locating disturbance projects near sensitive areas or intact landscapes that are more suitable for mitigation activities. This may be an unintended consequence of BLM's approach, and not one that the agency appears to have contemplated. Nevada's "habitat quantification tool" avoids this concern by applying a diverse "a set of metrics, applied at multiple spatial scales, to evaluate vegetation and environmental conditions related to sage-grouse habitat quality and quantity," to identify credit potential "in the most beneficial locations for the sage-grouse." 2019 Nevada Greater Sage-Grouse Conservation Plan, p. 87.

Montana and Oregon both express a preference for project developers to obtain mitigation credits within the same "Service Area" as the area of impact. *See, e.g.,* Montana Mitigation Policy, at 65. However, both states recognize that credits may not always be available

[8] It is unclear whether BLM's "mitigation leasing" concept for mitigation on public lands will be workable. Indeed, the concept does not appear to provide for the certainty of tenure required for participation in the Nevada CCS, as the project life of credit projects must be for the duration of the impacts of the debit project, plus ten years. 2019 Nevada Greater Sage-Grouse Conservation Plan, p. 89. To this point, BLM must prepare a supplemental DEIS to evaluate how the Public Lands Rule will affect these land use plan amendments.

within the same Service Area and allow project proponents to make in-lieu payments to fund conservation projects. *Id.* The New Alternatives' mitigation proximity requirement also conflicts with BLM's Mitigation Handbook H-1794-1 (as reinstated by Instruction Memorandum 2021-046), which states that:

> The BLM should identify a compensatory mitigation site without implying a preference for siting it closer to or farther from the impacted site, as long as a reasonable relationship is maintained between the impacts of the public land use and the compensatory mitigation measure(s) being implemented at that site …
>
> The maximum benefit to the impacted resource might be achieved at a compensatory mitigation site either geographically close or geographically far from the impacted site, so long as the mitigation at that site has a reasonable relationship to benefiting the public land resources where the resource impact is expected to occur or is occurring. The site that provides the maximum benefit to the public land resources does not need to be near the site where the resource impact occurred.

BLM Mitigation Handbook H-1794-1 (2016), pp. 1-4, 2-17. Removing the mitigation proximity requirement (or, at minimum, aligning it with existing state requirements) will bring BLM's chosen management approach in line with its own mitigation policy and allow for more robust mitigation systems.

Finally, as explained in more detail below (see comments on disturbance cap protocol), BLM also fails to properly explain how it delineated the HAF fine- and mid-scale units, and the Habitat Assessment Framework Technical Reference (TR2710-1) (Stiver et al., 2015) does not clearly describe how to undertake this process. The BLM must describe how these areas were delineated and give the public an opportunity to comment on its methodology. Similarly, BLM does not provide mapping data for the lek neighborhood cluster units from Coates et al., 2021, which would be used for both adaptive management and compensatory mitigation. These technical errors violate NEPA. *See Lands Council v. Powell*, 395 F.3d 1019, 1031 (9th Cir. 2005) ("NEPA requires that the Environmental Impact Statement contain high-quality information and accurate scientific analysis."); *W. Watersheds Project v. Bureau of Land Mgmt*., 2:10-CV-02896 KJM, 2014 WL 119189, at *1 (E.D. Cal. Jan. 9, 2014) ("NEPA requires agencies to ensure professional and scientific integrity by setting forth the methodologies used").

2. Requiring mitigation to be completed prior to initiating the disturbance activity is not practical.

The Draft RMPA/EIS, under the New Alternatives, says that "[c]ompensatory mitigation should be completed prior to initiating the activity causing the need for compensation and monitored for retention and efficiency." Draft RMPA/EIS, p. 2-23. The BLM argues that "allowing a project to proceed before compensatory mitigation is in place would result in a time lag, potentially decades, during which GRSG habitat would be fragmented and reduced in carrying capacity by project impacts." *Id.*, p. 4-30. The Draft RMPA/EIS, however, fails to identify any supporting information for this conclusion and does not undertake any serious inquiry into the effects of the requirement. Postponing construction while compensatory mitigation activities are completed would equally result in serious "time lag[s]" to already drawn-out approval timelines, including renewable energy and other critical infrastructure projects that the Biden-Harris Administration has committed to shortening. *See* White House, Fact Sheet: Biden-Harris

Administration Delivers on Permitting Progress to Build America's Infrastructure and Clean Energy Future Faster, Safer, and Cleaner, April 30, 2024.

A "prior to" timing requirement would also ignore how existing mitigation systems function. For example, the Nevada CCS is a market-based, proactive solution to compensatory mitigation that requires offsetting disturbances by conserving "verified 'functional acre[s]' that meet[] the durability criteria" defined by the Sagebrush Ecosystem Technical Team ("SETT") (referred to as "stewardship" projects) or "by enhancing or restoring the [mitigation] project site and committing to maintain the additional functional acres achieved over time" (referred to as "uplift'" projects). 2019 Nevada Greater Sage-Grouse Conservation Plan, p. 86; Sagebrush Ecosystem Program, Credit Project Proponents FAQs, p. 4. The CCS adjusts mitigation ratios (i.e., the ratio of credits to debits) up or down based on, among other things, the proximity of the debit project to potential credit sites and for pinyon-juniper removal. Credits are periodically "verified" by third-party verifiers to ensure that they are maintained throughout the duration of the debit project, plus ten years. 2019 Nevada Greater Sage-Grouse Conservation Plan, p. 88.

Fundamentally, the CCS defends against uncertainty associated with whether mitigation projects will become durable and resilient habitat in a more nuanced and flexible manner than BLM's one-dimensional approach. If BLM is to move forward with a rangewide compensatory mitigation timing protocol, it should adopt the framework proposed in Table 2-7. The BLM might also consider requiring periodic monitoring of mitigation activities to ensure compliance with durability standards and timely implementation of conservation actions. Contractual performance assurances can be used to "outline[] actions to maintain habitat performance and to limit risks from future impact[s] for the duration of the project." 2019 Nevada Greater Sage-Grouse Conservation Plan, p. 86. However, monitoring and performance assurances should defer to state systems where applicable. These protocols will ensure that mitigation projects will proceed on a similar timeline as the activity causing the need for compensation, thereby reducing the risk of habitat fragmentation and reduced carrying capacity, while simultaneously protecting against unnecessary construction delays.

The Draft RMPA/EIS also contains inconsistent statements regarding the timing of compensatory mitigation. For example, the Draft RMPA/EIS in Table 2-5 (Comparison of Alternatives, Mitigation) states that "[c]ompensatory mitigation should be completed prior to initiating the activity causing the need for compensation." Draft RMPA/EIS, p. 2-23. By contrast, Table 2-7 (Comparison of Alternatives, Disturbance Cap) provides that if compensatory mitigation is provided as an exception to the disturbance cap under Alternatives 5 and 6, the mitigation "would not have to be completed and functioning prior to being able to grant the exception." *Id.*, p. 2-24. Instead, the mitigation project needs only to be "planned, funded and approved by the operator, BLM, surface owner, and in coordination with the appropriate State agency," before any surface disturbing activities take place. *Id.* "[L]ong-term assurances" and/or additional mitigation would make up for "uncertainty associated with whether the planned compensatory mitigation project would successfully become habitat." *Id.* The approach in Table 2-7 is flexible, does not delay construction timelines, and accomplishes the goal of ensuring that durable mitigation is secured before disturbance takes place.

3. The "No Net Loss" standard requires additional clarification.

The New Alternatives would require that impacts that cannot be avoided or minimized be compensated at a level and in a manner that fully offsets both direct and indirect impacts to habitat function. Draft RMPA/EIS, p. 2-23. At a minimum, this means that mitigation should meet the "no net habitat loss" standard. *Id.* "Establishing no net loss will require full restoration of

functional habitats or enhancement of habitats to minimally support the number of GRSG present prior to disturbance at the apex of the population cycle." *Id.*

Barrick generally supports application of the "no net habitat loss" standard at the RMP level, because it is generally consistent with multiple state standards, including Montana, Idaho, and Oregon. *See* Montana Mitigation Policy, at 53; Idaho Policy for Greater Sage-Grouse Management in Idaho (Oct. 22, 2021), at PDF p. 36-37; Oregon Mitigation Policy, at 36, n. 26. however, BLM must clarify key points in its definition of "no net habitat loss." First, BLM must clarify that habitat functionality is measured in relation to a prudent "baseline," i.e., the actual habitat function value of the area to be disturbed. Baseline conditions may be assessed during BLM's landscape inventories or pre-project habitat assessments. Second, the opportunity to preserve existing functional habitat should be recognized in the definition. And, finally, the "no net habitat loss" standard should not include a secondary population metric by which habitat functionality is measured against "the number of GRSG present prior to disturbance at the apex of the population cycle." While habitat functionality and population are correlated, there is no guarantee that GRSG populations will return to their "apex," short of re-populating areas with individual GRSG.

Based on the foregoing, the definition of "no net habitat loss" should read as follows:

> Establishing no net habitat loss will require full restoration of functional habitat based on the pre-project habitat value, enhancement of habitats, or preservation of existing functional habitats.

4. Requirements to coordinate with state agencies need to be clarified.

In its discussion of coordination with state agencies, the Draft RMPA/EIS creates confusion. For example, the 2015 ARMPA for Idaho and Southwestern Montana requires BLM to "coordinate with the state of Montana and the Montana Sage-grouse oversight team" and the "State of Idaho and the Idaho Sage-Grouse Implementation Task force regarding … the implementation of conservation measures [and] … mitigation." *See* 2015 Idaho and Southwestern Montana ARMPA ("2015 ID/MT ARMPA"), MD CC 4, MD CC 5. It also requires BLM to "consult" with a "state agency wildlife biologist" in determining whether a project will have direct or indirect impacts on GRSG populations or habitat. *Id.*, App'x F, F-19, and App'x J, pp. J-2 through J-3. While the requirement that BLM seek input from the state, and particularly from local stakeholders, is laudable, BLM should clarify that it will not defer to or apply any state input (whether via consultation with a state biologist or via state regulation or executive orders) that conflicts with the mining laws for projects authorized under 43 C.F.R. subpart 3809. For example, no-surface-occupancy (NSO) lek buffers that may be applicable on state lands under state law to all types of development should not apply to activities on BLM lands permitted under the mining laws.

B. The proposed disturbance cap protocols and density caps are not sufficiently justified in the Draft RMPA/EIS.

The 2015 and 2019 ARMPAs imposed disturbance cap restrictions in all states, and density cap restrictions in Montana, Idaho, and Oregon. Barrick is concerned that BLM has not expressly recognized, in unequivocal terms, that the disturbance and density cap protocols do not apply to the exploration and development of locatable minerals, as authorized under 43 C.F.R. subpart 3809. *See* Draft RMPA/EIS, p. 2-39 (The Draft RMPA/EIS says only that BLM will "[a]pply the disturbance cap to the extent consistent with applicable law (such as the Mining

Law of 1872) and valid existing rights.").The New Alternatives also propose changes to the disturbance and density caps that are problematic because they would create a scenario where large areas may become unavailable to development that supports locatable minerals projects, including, but not limited to, access roads and energy and transmission ROWs. The below comments address these issues in more detail.

1. The BLM must clarify that disturbance caps and density caps are inapplicable to locatable minerals.

The Draft RMPA/EIS exacerbates confusion about whether disturbance and density caps apply to locatable mineral projects—they do not. With respect to *disturbance* caps, the 2015 ARMPAs state that even though "locatable mine sites are included in the degradation calculation [for the disturbance caps], mining activities under the 1872 mining law *may* not be subject to the … disturbance cap[s]". *See, e.g.,* 2015 ID/MT ARMPA, at pp. E-5, E-22. As for the *density* caps, the 2015 ARMPAs opaquely state that application of density caps is "subject to applicable laws and regulations, such as the 1872 Mining Law, valid existing rights, etc." *See id.*, pp. 2-13, E-5, E-8. Use of the term "may" inserts undue vagueness because it is open to multiple interpretations (i.e., "might not be subject" versus "cannot be subject").

The Draft RMPA/EIS does not resolve these ambiguities. Instead, it states that that disturbance caps apply only "to the extent consistent with applicable law (such as the Mining Law of 1872) and valid existing rights." The Draft RMPA/EIS does not speak at all to the applicability of the density caps to projects authorized pursuant to the mining laws. *See* Draft RMPA/EIS, pp. 2-29, 2-39. Rather than leaving readers to guess what it means to be "consistent with" the Mining Law or valid existing rights, or whether the disturbance and density caps "may" or may not apply, BLM should amend the Draft RMPA/EIS to clearly state that neither disturbance caps nor density caps apply to any locatable mineral activities authorized under the Mining Law of 1872, FLPMA, and BLM surface use regulations at 43 C.F.R. subpart 3809. . This statement should read as follows:

> All states: The disturbance cap does not apply to activities authorized under the Mining Law of 1872 or BLM's regulations at 43 C.F.R. subpart 3809 and should be applied to the extent consistent with applicable law and valid existing rights.

This clarification is necessary to comply with the Mining Law's command that all public lands are "free and open to exploration" for minerals and "occupation" for such purpose. *See* 30 U.S.C. § 22. This statutory command ensures both pre-discovery and post-discovery access, use, and occupancy rights to enter public lands for mineral exploration and development, and all uses and purposes reasonably incident thereto. Application of disturbance and density caps to locatable mining exploration and development would constitute an impermissible *de facto* withdrawal, as only public land that is formally withdrawn under specific procedures—which do not include simply promulgating land use plan—can be closed to mineral location and development. *See* 43 U.S.C. § 1714.

Despite this well-settled legal position, BLM has not clearly stated that the disturbance and density caps do not apply to locatable mineral exploration and development activities, nor has it clearly stated where it intends to draw the line as to what constitutes mining activity that cannot be subject to a disturbance cap. Mining is dependent on a number of activities that may not be considered a "mine site" or may not be within a plan of operations but are nevertheless critical to the development and operation of mining under the Mining Law. It may be the case that BLM intends to restrict supporting access and infrastructure necessary for exploration and

mine site activity under these disturbance and density cap restrictions in violation of the Mining Law. The BLM must clarify this issue for locatable mineral development to allow for transparency about how it intends to treat applications for locatable mineral development. To that end, BLM should more clearly and definitively state in a revised RMPA/EIS that neither the disturbance caps nor the density caps apply to any locatable mineral activities authorized by Mining Law of 1872, FLPMA, and BLM's regulations at 43 C.F.R. subpart 3809, including development and operation of existing mining claims, exploration for and development of new claims, and all activities reasonably incident thereto.

2. Delineation of the HAF fine-scale is unexplained and unworkable.

In order "[t]o conserve seasonal habitat requirements associated with a local GRSG," the Draft RMPA/EIS would apply disturbance caps "to PHMA within the Habitat Assessment Framework (HAF) fine scale." Draft RMPA/EIS, p. 2-28. The Habitat Assessment Framework Technical Reference (TR2710-1) (Stiver et al., 2015)—characterized as a "a multi-scale assessment tool that provides data to evaluate sagebrush habitats for GRSG suitability"—does not delineate the fine-scale units used in the Draft RMPA/EIS. *Id.*, p. 2-120. Likewise, the Draft RMPA/EIS offers little explanation for these specific delineations, other than that they were made "by the BLM State Offices, Partners, with facilitation by the National Operations Center." *See id*., App'x 1, Map 3.7. How these areas are drawn will have significant impacts on proposed and existing development; further information on how the HAF fine- and mid-scale units were developed is necessary to provide meaningful comment on the process.

The BLM appears to recommend adoption of the HAF fine-scale because "[p]revious application of a disturbance cap at a larger scale (e.g., biologically significant unit) did not limit the consideration to local populations and were often 'diluted' by large amounts of non-habitat." Draft RMPA/EIS, p. 2-28. But non-habitat is not a determinative factor in disturbance cap calculations under Alternatives 1 and 2 because the disturbance cap applies only to anthropogenic disturbance in PHMA. The BLM also admits that "[t]he smaller size of most HAF fine-scale areas compared to BSU-scales might result in the cap being reached more quickly," which will prevent future development. *Id.*, p. 4-22. However, BLM conspicuously fails to analyze these reasonably foreseeable consequences of this change. The HAF fine-scale units also ignore state-borders, unlike state-defined BSUs,[9] meaning the GRSG conservation policies of neighboring states and project authorizations by out-of-state BLM offices but within the same HAF fine-scale unit could impact development in adjacent states. The BLM cannot ignore these practical implications in its attempt to provide rangewide solutions to problems that have significant local implications.

[9] For example, BSUs are a "[g]eneral delineation of sage-grouse populations in Nevada," and are defined in a "[c]ollaborative process with NDOW biologists and the SETT." 2019 Nevada Greater Sage-Grouse Conservation Plan, p. 38-39. "In general, the population delineations are anticipated to be fairly static as these are coarse-scale population delineations … [that] encompass the broad scale at which impacts to sage-grouse are to be considered for management." *Id.* at p. 39-41. Adoption of the HAF fine-scale is yet another instance of a heavy-handed, federal overreach that favors decision making by federal officials in Washington D.C., over the expertise and experience of state conservation and wildlife agencies.

3. Application of the disturbance cap over the HAF fine-scale selection area disproportionately affects key jurisdictions.

The switch from BSUs to the HAF fine-scale areas has disproportionate impacts on certain states that previously used larger BSUs. This issue appears to be particularly true in Nevada, where several HAF fine-scale selection areas fit into single BSUs. For example, the Central Great Basin BSU contains portions of the Shoshone, Cortez, Toiyabe, Dagget Creek, Little Smokey Valley, and South Fork HAF fine-scale units. The BSUs in Montana and Idaho are also large areas. For example, all of southwestern Montana is currently one BSU, and Idaho currently only has eight BSUs statewide. *See* 2015 ID/MT ARMPA, pp. 2-12, E-1. The newly proposed HAF fine-scale areas are significantly smaller subsets of these areas (e.g., Southwestern Montana would move from one BSU to two HAF fine-scale areas, while the number of HAF fine-scale areas in Idaho would be more than double the state's current number of BSUs).

These changes are important because, as the Draft RMPA/EIS acknowledges, "[t]he smaller size of most HAF fine-scale areas compared to BSU-scales might result in the cap being reached more quickly." *See* Draft RMPA/EIS 4-22. And, once the cap is hit, "new infrastructure projects [will be] be deferred to the extent allowable under applicable laws (such as the Mining Law of 1872) or valid existing rights." Draft RMPA/EIS, p. 2-29. Further, caps being reached more quickly would encourage development in undeveloped areas that have not yet reached the cap or create a race for development in areas that are close to hitting the cap, both of which are bad public lands policy. The Draft RMPA/EIS does not adequately analyze these negative consequences, nor does it sufficiently demonstrate how the new science and information that BLM relies on dictates such a significant shift for the BSU-scale framework.

4. The Draft RMPA/EIS inadequately analyzes cap levels and current conditions.

The Draft RMPA/EIS swiftly dismisses concerns about disturbance cap levels by stating that the "percentage of disturbance in PHMA/IHMA within fine scale HAF boundaries is well below 3% and below 1% in most areas." Draft RMPA/EIS, p. 4-22. However, more detail, discussion, and data on the status of the disturbance and density caps in the proposed HAF fine-scale areas should be included in state-specific draft supplemental EISs with additional opportunity for public comment. Perhaps the lack of analysis on this is simply due to the scale of the rangewide approach. With a more specific state-by-state planning effort, more analysis of current conditions would be possible. Without more specifics on the current conditions of the cap percentage potential exceedance, the Draft RMPA/EIS does not comport with NEPA's "hard look" requirements or the APA's notice and comment requirements, because it is impossible for stakeholders to fully understand and provide meaningful comments on the impacts of the cap changes being proposed.

5. Changes to the project-scale assessment areas are unnecessary.

The BLM is also proposing to change the way project-level assessment areas are identified, despite the fact that there is no reason to depart from the methodology currently utilized in both the 2015 and 2019 ARMPAs. The disturbance cap is applied at both the BSU and project-level scale. *See* Draft RMPA/EIS, pp. 2-28 through 2-33. The project-level scale is currently determined using the Disturbance Density Calculation Tool ("DDCT") analysis area. The DDCT analysis area is identified with the following methodology: (1) identify potentially affected active leks within a 4-mile buffer of the physical disturbance to be caused by the

proposed project and (2) place a 4-mile buffer around each of the affected active leks. All PHMA within the 4-mile project buffer, combined with the 4-mile lek buffer(s), creates the project-level assessment area. *Id.*, pp. 2-32 through 2-33. This approach is readily applicable by project proponents and does not add unnecessary costs to projects.

Under the New Alternatives, the project-level assessment area would be determined by identifying the extent of PHMA (and IHMA in Idaho) that supports the GRSG population potentially affected by the proposed project (that is also located in PHMA or IHMA); it is not to be limited to the area where indirect impacts are anticipated and should include associated seasonal habitats and transition zones between these habitats within PHMA or IHMA. *Id.* If information to identify the portions of the PHMA/IHMA used by the potentially affected local GRSG population is not available, only then would the Draft RMPA/EIS allow the use of the DDCT analysis methodology. *Id.* The Draft RMPA/EIS fails to explain how and by whom this analysis will be performed. Moreover, several undefined terms that are not linked to any scientific method (e.g., "supports," "potentially affected," etc.) vest too much discretion into the analysis with no objective standards. This will inevitably lead to inconsistent application of this methodology.

6. The BLM should analyze increasing the disturbance cap threshold.

The New Alternatives would keep the 3% disturbance cap in PHMA in all states (and the 5% disturbance cap at the project-scale in Montana and Wyoming, except for Alternative 4). Justification for the 3% disturbance cap was based on a study conducted before the 2015 ARMPAs, which showed that "[a]nalyses of disturbance thresholds found GRSG began negatively responding to disturbances at approximately 4.5% disturbance and did not use habitats when surface disturbance exceeded 8% (Kirol 2012)." Draft RMPA/EIS, p. 4-1.

While a conservative factor-of-safety (i.e., 1.5% below the 4.5% threshold identified in Kirol 2012) may have been reasonable in 2015, the Draft RMPA/EIS fails to consider increasing the 3% disturbance cap thresholds from the 2015/2019 ARMPAs in light of the fact that, in PHMA and IHMAs, anthropogenic disturbance increased by **only 0.03%** rangewide between 2015 and 2020. BLM, 2015-2020 Monitoring Report, p. viii. The 3% disturbance cap threshold is arbitrary, not backed by science, obstructs access to federal public lands for critical energy and mining projects, and violates BLM's multiple-use mandate. Moreover, it has long been argued that the disturbance cap "actually encourages habitat fragmentation because it provides a perverse incentive to locate new disturbances in areas with little existing disturbance, which in turn increases direct and indirect effects to GRSG." Governor Sandoval, 2015 Protest Letter. While BLM should not continue perpetuating these errors, it has elected to ignore this important issue in this planning process in favor of further adjustments to methodologies and systems that do not need changing.

7. The disturbance cap numerator should not include projects that are approved but not yet constructed.

The BLM is proposing to include projects that have been approved but have not been constructed in the disturbance cap numerator under the Alternatives. This new requirement will inevitably lead to confusion and unnecessary land use restrictions, as projects on public lands are frequently delayed by the processing of permits necessary for construction or operation, litigation, and unfavorable market conditions. It is likewise unclear what "approved" means in this context. At bare minimum, the Draft RMPA/EIS should clarify that "approved" projects are

only those that will be constructed on lands managed by the federal government and have received a record of decision, decision record, or other formal approval from a federal agency.

8. The BLM's selected approach should include common-sense exceptions to the disturbance cap.

The 2019 NV/CA ARMPA allows for exceptions to the disturbance cap protocol, at both the BSU- and project-scale, to be granted "in situations where a net conservation gain to the species can be achieved, as a component of compliance with a state mitigation plan, program, or authority, such as required by State of Nevada Executive Order 2018-32 (and any future regulations adopted by the State of Nevada regarding compensatory mitigation, consistent with federal law)." 2019 NV/CA ARMPA, p. 2-7 (MD SSS 2); *see* Draft RMPA/EIS, p. 2-35 (identifying the "allocation exception criteria" added to the 2019 NV/CA ARMPA as additional exceptions to the disturbance cap protocol). The 2019 NV/CA ARMPA also eliminated the cumbersome requirement for unanimous approval by a multidisciplinary technical team and BLM State Director concurrence. 2019 NV/CA ARMPA, p. 2-8. This exception is flexible and acknowledges the importance of state mitigation systems, like the Nevada CCS.

Without explanation from BLM, the New Alternatives would limit disturbance cap exceptions to project-scale exceedances. Draft RMPA/EIS, p. 2-34. The BLM makes no effort to explain why disturbance cap exceptions should not apply at different spatial scales, including the BSU or HAF fine-scale assessment area. This would needlessly decrease the spatial scale at which impacts are analyzed to the much narrower "project analysis area." *Compare* 2019 NV/CA ARMPA, p. 2-7 ("indicates the project can be modified to result in a net conservation gain at the BSU level" *with* Draft RMPA/EIS, p. 2-36 ("indicates the proposed project is expected to improve the condition of GRSG habitat within the proposed project analysis area."). The Draft RMPA/EIS would also reinstate the State Director concurrence requirement and the requirement that a multidisciplinary "technical team" evaluate project impacts. *Id.* at p. 2-36. As detailed above (see comments on Compensatory Mitigation), the proposed disturbance cap protocols would additionally contain unnecessary limitations on the geographic proximity and timing of compensatory mitigation used to qualify for a disturbance cap exception.

Despite these limitations, there are some improved elements of the Draft RMPA/EIS that would allow for additional exception criteria, including:

- Exceedances triggered by consolidating disturbance associated with the proposed project as a strategy to leave other undisturbed portions of the PHMA undisturbed from new authorizations (with compensatory mitigation to address residual impacts);
- Exceedances within RMP designated utility corridors if doing so will decrease the impacts to GRSG habitat in comparison to siting a proposed project outside the designated corridor in areas under the disturbance cap; and
- Exceedances created by renewals or re-authorizations of existing infrastructure in previously disturbed sites or expansions of existing infrastructure that do not result in new direct, indirect, or cumulative impacts.

These exceptions are useful additions because they promote co-location of infrastructure, recognize expansion rights for existing authorizations, and acknowledge the congressional preference afforded to designated utility corridors. *See, e.g.,* Energy Policy Act of 2005, Sec. 368, 119 Stat. 594, Pub. L. 109-58, Aug. 8, 2005 (by mandating that BLM "designate … corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on Federal land," Congress effectively assured that such corridors would enjoy a

preference over other resource uses.). Again, these exceptions would apply only on a project-scale basis; HAF fine-scale exceedances would apply only for actions necessary to protect human safety. Exceptions should be permitted at both scales to promote responsible development conditioned on achieving a net conservation gain to the species, as a component of compliance with a state mitigation plan, program, or authority.

When viewed together, the proposed disturbance cap exceptions are extremely narrow and would likely prove unworkable. The BLM must consider how disturbance cap exceptions can promote flexibility and acknowledge the role of state mitigation systems. Accordingly, BLM's adopted management approach should mirror the 2019 NV/CA ARMPA's disturbance cap exception criteria, in terms of spatial scale application, manageability, and review process, and should include the three above-listed exceptions that address long-standing issues with the disturbance cap protocol.

C. BLM's attempts to homogenize adaptive management protocols are short-sighted.

Each regional planning area has implemented its own approach to adaptive management since the 2015 ARMPAs. Appropriately, "the metrics, thresholds, timeframes, and spatial scales for evaluating and responding to triggers vary state by state," because they are the product of informed local decision-making. Draft RMPA/EIS, p. 4-12. As BLM asserts, however, adaptive management "results were not comparable across political boundaries, creating challenges in determining effective habitat management responses and applying differential management to projects crossing state boundaries." *Id.* at p. 2-121. The Draft RMPA/EIS proposes to address these concerns by adopting a rangewide adaptive management framework using the methodology from Coates et al., Range-wide Greater Sage-Grouse Hierarchical Monitoring Framework: Implications for Defining Population Boundaries, Trend Estimation, and a Targeted Annual Warning System, Open-File Report 2020-1154 (2021). However, BLM failed to analyze the substantial impacts that could arise from toppling established state-systems. The BLM has also overlooked several critical problems with the new framework, as explained in more detail below.

1. The BLM should explain how sagebrush cover data will be updated to calculate habitat adaptive management thresholds.

The Draft RMPA/EIS proposes to tie soft and hard habitat adaptive management thresholds to annual sagebrush loss in PHMA/IHMA within neighborhood clusters. Draft RMPA/EIS, p. 2-122. "Baselines for calculating sagebrush loss will be determined by the sagebrush base layer delineated using LandFire data … from the most recent year prior to publication of the ROD." *Id.* Using sagebrush cover data from a single year (i.e., the year prior to publication of the ROD) will "lock in" sagebrush conditions, including any loss from wildfires, existing in the dataset at that point in time. The BLM does not explain how it would update the baseline sagebrush cover dataset; it also does not say how often updates would occur so that restored sagebrush communities would be reflected in the baseline data. Sagebrush cover data must accurately reflect on-the-ground conditions to ensure a functioning adaptive management strategy. This oversight must be remedied, as implementation of these changes without discussing how BLM will update the baseline sagebrush cover dataset will result in significant discord and confusion.

2. Adaptive management responses should be narrowly tailored to address the causal factors identified and any permit changes must be approved by the Authorized Officer.

If a habitat or population adaptive management threshold is met, the New Alternatives would allow BLM to "modify any permitted activity identified as a causal factor to meeting a threshold, as legally allowable." Draft RMPA/EIS, p. 2-126. Permit modifications should be narrowly tailored to address the causal factors identified to avoid unnecessary or burdensome limitations on previously authorized activities. Operational modifications (i.e., time, frequency, or intensity of the activity) should be considered before design modifications that affect the overall performance or scale of the authorized activity. Any permit modifications should be approved by the Authorized Officer in a written report describing why less restrictive modifications would not address the causal factors of the threshold being met. Finally, the list of exceptions to limitations imposed for exceeding thresholds identified in the Draft RMPA/EIS should recognize expansion rights for existing authorizations that would not cause additional impacts to GRSG populations or its habitat.

3. The thresholds to remove habitat adaptive management responses are impractical and lack sufficient clarity.

Barrick supports the inclusion of "un-triggers," or thresholds that allow BLM or state wildlife agencies to lift adaptive management responses after the conditions that caused the habitat or population threshold to be reached are addressed. While the New Alternatives provide "un-triggers" to reverse soft or hard habitat thresholds, they could take several years to implement and the Draft RMPA/EIS lacks clear direction on how they would be implemented.

The "restoration of sagebrush vegetation communities" to the same "sagebrush conditions and/or habitat function prior to the events that resulted in meeting a habitat threshold" could take years, even decades, to implement. Draft RMPA/EIS, p. 2-122. Large wildfire events could easily trip thresholds across several neighborhood clusters, triggering adaptive management responses that could stop development in those areas until sagebrush communities are fully restored (again, years to decades). "If the neighborhood cluster cannot be restored to original sagebrush conditions and/or habitat function due to ecological or disturbance limitations," BLM would allow "restoration and/or habitat enhancement in adjacent neighborhood clusters" with the express goal of "increase[ing] the number of GRSG supported in those areas." *Id.* In this provision, BLM fails to identify, among other things, who would perform the restoration in the adjacent neighborhood clusters, what restoration standards would apply to achieve an increase in GRSG numbers, or how increases in GRSG numbers in adjacent neighborhood clusters would be calculated. The BLM casually suggests that "this" (i.e., the restoration of adjacent neighborhood clusters) will be done "in coordination with appropriate state agencies" with no further detail. *Id.* Finally, "[i]f enhancing habitats in adjacent areas does not reverse the threshold," BLM would assess whether the area should still be considered GRSG habitat. *Id.* Once more, BLM does not prescribe any standard or timeline.

The proposed standard for reversing habitat adaptive management triggers also does not differentiate between anthropogenic disturbance and habitat loss caused by "climate conditions." As a result, it ignores how habitat loss from "climate conditions," like drought-induced wildfires, "perpetuate[s] long-term declines in population trajectories." Coates et al., Range-wide Greater Sage-Grouse Hierarchical Monitoring Framework: Implications for Defining Population Boundaries, Trend Estimation, and a Targeted Annual Warning System, Open File Report 2020-1154 (2021), p. 89. "[W]ildfire frequency and size has dramatically increased in the

past two decades, which has contributed to conversion of vast areas from a shrubland state to one of annual grassland," especially in Nevada. *Id.* (internal citations omitted). The "vast spatial extent" of these wildfires and the conversion to annual grasslands "***may simply outpace implemented restoration efforts*** owing to spatial and temporal asynchronies between slower sagebrush recovery processes and more immediately reactive sage-grouse demographic responses." *Id.* (internal citations omitted). In other words, gradual restoration of sagebrush communities after large-scale climate-driven events may be rendered ineffective by more "reactive sage-grouse demographic responses" that trigger population adaptive management thresholds before restoration activities are completed. The Draft RMPA/EIS's arbitrary habitat loss thresholds (i.e., 5% soft habitat threshold and 65% hard habitat threshold[10]) further emphasize that BLM ignored the synergies between habitat loss and climate conditions.

Barrick strongly recommends that BLM's adopted approach "decouple" climate-related habitat loss by comparing habitat loss trends in neighborhood clusters to trends at larger spatial scales, or BLM could distinguish between direct anthropogenic disturbances and climate-caused disturbance by assigning appropriate thresholds to each category of habitat loss.

4. BLM must notify and keep stakeholders informed about Causal Factor Analyses.

Under the New Alternatives, BLM would be required to conduct a "causal factor analysis" ("CFA") to analyze and determine the causal factor(s) if a habitat or population threshold is met. Draft RMPA/EIS, p. 2-123. While the New Alternatives would require that the analysis "be detailed in a written report," the Draft RMPA/EIS is silent on mechanisms to keep interested stakeholders apprised of CFA deliberations and to hold the CFA team accountable for meeting timelines. *Id.,* p. 2-124. The BLM's adopted approach should require that BLM notify interested stakeholders, in the Federal Register or at the BLM State or District Office level in the affected neighborhood cluster(s), of important milestones, including, but not limited to: (1) when a habitat or population threshold is met; (2) when the rapid assessment is completed and the results of the assessment; and (3) if necessary, when the CFA report is available for review. Also, CFA determinations, including rapid assessments, must be available for review and public comment for no less than 30 days after their release before adaptive management responses are implemented. Meetings of the CFA team must be open to the public, and the public should receive sufficient advance notice about their time and place. These changes could have significant impacts on stakeholders, and they must be apprised if the regulatory ground threatens to shift from under them.

5. Causal Factor Analysis teams should include stakeholder representatives from major industries within the affected neighborhood cluster(s).

The Draft RMPA/EIS says that "at a minimum," the CFA team should include "the local BLM biologist, BLM state sage-grouse lead, and a representative from the state wildlife agency."

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[10] A soft trigger represents "any single occurrence or combination of occurrences in PHMA/IHMA in a neighborhood cluster" that cause the loss of more than 5 percent of the "area capable of supporting sagebrush" in a single year. Draft RMPA/EIS, p. 2-122. A hard trigger occurs when the existing sagebrush extent drops below 65% of the area capable of supporting sagebrush (i.e., 35% is lost) or a soft trigger is met in four consecutive years. *Id.* Sagebrush loss in a given year would be calculated by comparing sagebrush cover data collected by remote sensing (LandFire) to the baseline data from the most recent year prior to publication of the ROD.

Id. at p. 2-124. This language could more strongly reflect the policy of western states, like Nevada, by specifying that it "will use a collaborative and consensus-based process with stakeholder, appropriate and local agencies, and affected authorized land users when developing and implementing management resources when [an adaptive management] trigger has been identified." 2019 Nevada Greater Sage-Grouse Conservation Plan, p. 97. The BLM's adopted approach should clarify that BLM will solicit participation from affected stakeholders and authorized land users in the impacted neighborhood cluster(s). Individuals may represent major industries within the neighborhood cluster(s).

6. Causal factor analyses should last no longer than six months from the time the threshold is identified and should be guided by milestones.

Timely determination of the potential causes of an adaptive management threshold being met is critically important, as the Draft RMPA/EIS proposes to restrict new authorizations during rapid assessments and CFAs.[11] For example, the New Alternatives would prohibit the authorization of any "new permitted activities … until the rapid assessment is completed and documented." Draft RMPA/EIS, p. 2-125. While certain new permitted activities could be considered during CFAs for soft thresholds, "no new proposed permitted activities [would] be authorized until a CFA is completed" if a hard threshold is met. *Id.* Accordingly, BLM's adopted approach should include a hard six-month deadline for conducting CFAs, beginning from the date that the threshold is met and including the 60-day rapid assessment period. The assessment period should be guided by periodic milestones, whereby potential causes are eliminated from consideration and restrictions on those causes are removed, and draft assessment reports are made available for public review. Milestones should be set forth in documentation for the rapid assessment if obvious cases are not easily identifiable. Exceptions to the disturbance cap and habitat allocations should apply during rapid assessments and CFAs.

If no cause for a habitat or population threshold being met can be identified at the end of the six-month assessment period, BLM should be required to produce a structured monitoring and analyses plan before it may implement restrictions on existing or new authorizations in the affected neighborhood cluster(s). Any modifications to existing or new authorizations imposed after an inconclusive CFA analysis should automatically phase out at three-month intervals unless BLM produces a progress report on the status of its CFA determination that justifies the continued need for the modifications.

D. If BLM is going to change lek definitions, it needs to provide further analysis.

The Draft RMPA/EIS arbitrarily proposes to adopt the lek status definitions used by the Western Association of Fish and Wildlife Agencies ("WAFWA") rangewide, stripping away local decision-making and ignoring variations in subpopulations and local habitat conditions that justify different definitions. *See* Draft RMPA/EIS, p. 2-9. In doing so, BLM undertook no independent evaluation of these definitions; in fact, WAFWA's definitions are not even analyzed in the underlying source document but are lifted from other studies. If BLM wants to adopt

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[11] As detailed in a comment above, BLM's adopted approach must comply with and recognize the non-discretionary rights granted under the mining laws. The BLM may not unduly restrict or prohibit new or existing permitted activities authorized under the mining laws and BLM's 43 C.F.R. subpart 3809 regulations.

rangewide lek status definitions, it must evaluate how those definitions will impact local and regional management and whether the scientific foundation for those definitions is both well-supported and suitable for rangewide application.

The proposed definitions are also problematic for several reasons. For instance, the WAFWA definition of "active lek" would double the length of time that an unused lek is considered "active." *Compare* Draft RMPA/EIS, App'x 4, p. 4-3 (10-year observation period) to 2019 NV/CA ARMPA (5-year observation period). This means that development restrictions and compensatory mitigation requirements will attach to areas around obsolete leks that have seen no male attendance for twice as long. The same issue is present with the WAFWA definition of "pending active," which, in some cases, would quadruple the time that management restrictions would attach to potentially obsolete leks. *Compare* Draft RMPA/EIS, App'x 4, p. 4-6 (20-year observation period) to 2019 NV/CA ARMPA (5-year observation period). These changes would have serious consequences as lek status affects modeling inputs, monitoring for adaptive management thresholds, and the intensity of management actions. The WAFWA definitions also do not define key lek status, such as "unoccupied," "destroyed," and "abandoned," that have been used in prior planning efforts.

E. The right of access to mining and mineral exploration projects must be recognized.

The BLM must safeguard the right of access to mineral exploration and development projects located on federal public lands. With respect to locatable mineral activities authorized by the mining laws, any limitation or restriction on the ability to access these projects, including restrictions on motorized travel, is unlawful. In addition to guaranteeing the right to use and occupy federal lands open to mineral entry, these laws grant rights of ingress and egress to mining properties located on interior parcels of public land.

For example, the 2015 ARMPAs adopted seasonal and year-round travel and transportation restrictions that, if applied to locatable mineral activities, would violate rights granted by the Mining Law. As explained above, FLPMA's land use planning procedures are not enumerated among the sections of FLPMA that amend the Mining Law and, therefore, may not be used to restrict or otherwise infringe upon the "rights of ingress and egress" to locatable mineral operations. The BLM should clarify that such restrictions, including any temporary closures authorized under various other provisions in FLPMA, do not apply to locatable mineral projects.

F. New grazing management limitations are unwarranted.

The grazing management decisions proposed in the New Alternatives will increase the time it takes to approve new grazing authorizations and to renew existing authorizations. This is a troubling development, as BLM has struggled for decades to process permit renewals under its current grazing regulations. The Draft RMPA/EIS also states that the proposed management restrictions "could increase short-term and long-term costs to permittees and lessees and decrease AUMs." Draft RMPA/EIS, p. 4-66. The BLM, however, provides only vague suppositions on the impacts of these restrictions, including "increase[d] annual operating costs" in the form of "increased time feeding animals on base property, more complex pasture rotations or increased stockmanship such as herding or fence riding, which could require increased labor or fuel costs for moving animals." *Id.* The BLM must consider and analyze the fact that, by putting more pressure on base properties—which in the arid west are almost

always mesic systems that provide late brood-rearing habitat—there may be unintended consequences that hurt the same GRSG populations that the restrictions are trying to help.

In recognition of the fact that "[l]ivestock grazing can be a management tool to aid in the management or maintenance of vegetation communities within GRSG habitat," BLM should continue to work closely with grazing partners to realize common-sense adjustments to permit terms. Draft RMPA/EIS, p. 4-8. Any management action changes undertaken in the current planning process should be directed at improper grazing practices.

G. Allowing utility-scale renewable energy projects and transmission rights-of-way in PHMA is a welcome change in Alternatives 5 and 6.

In a welcome departure from prior planning efforts, Alternatives 5 and 6 would lift most proscriptive management designations that exclude utility-scale wind projects, solar projects, and major ROWs from PHMA. Draft RMPA/EIS, pp. 2-93, 2-96. As BLM points out, ROW exclusion areas will inevitably "limit new siting options in non-restricted areas, decrease service reliability to rural areas, increase conflict among facilities, and intensify impacts on other resources and uses." *Id.*, p. 4-76. These issues are especially harmful as Barrick pursues affordable and reliable energy and transmission infrastructure to achieve its clean energy goals. After addressing the substantive and procedural issues outlined in this comment letter, BLM's adopted conservation strategy should include this approach that allows renewable projects and ROWs in PHMA.

Of course, the proposed management restrictions across each of the alternatives would "result in overall greater development costs and increased review periods" at a time when the President and lawmakers are actively seeking new ways to make renewable energy development more economical-effective and to simplify permitting processes for critical infrastructure projects.[12] Several of the proposed Alternatives would also encourage "co-locating" infrastructure in existing ROWs and corridors. While this practice could reduce impacts to GRSG and their habitat, it could increase the risk of multiple system failures (e.g., "network redundancy and … service reliability") and "add mileage and construction costs." Draft RMPA/EIS, p. 4-76. Unfortunately, BLM fails to perform any substantive analysis of these additional costs. *See* DeSantis, et al., Cost of long-distance energy transmission by different carriers. iScience. 2021 Nov 22; 24(12):103495.

V. ALTERNATIVE-SPECIFIC COMMENTS

A. Alternative 1

Barrick has the most experience under the 2015 ARMPA, as BLM has been applying the 2015 ARMPAs in light of the District of Idaho injunction on the 2019 planning updates. Agency and project proponent/operator familiarity with the interpretation and execution of these land use plans is valuable and improves regulatory certainty. But Barrick strongly opposes the portion of this Alternative that continues to recommend land for withdrawal.

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[12] *See, e.g.*, Inflation Reduction Act of 2022, Pub. L. 117-169, 136 Stat. 1818, Aug. 16, 2022; Exec. Order 14057 ("Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability"); Exec. Order 14008 ("Tackling the Climate Crisis at Home and Abroad"); Final Rule: Rights-of-Way, Leasing, and Operations for Renewable Energy, Bureau of Land Management, 89 Fed. Reg. 35634 (May 1, 2024); White House, The Biden-Harris Permitting Action Plan to Rebuild America's Infrastructure, Accelerate the Clean Energy Transition, Revitalize Communities, and Create Jobs, (May 10, 2022).

This alternative also currently comports well with Nevada's CCS and the BEA, providing consistency and clarity across levels of programs and requirements.

B. Alternative 2

The BLM identifies Alternative 2 as the "No Action" Alternative, because it would re-adopt "the applicable decisions from the 2019 Greater Sage-Grouse ROD/ARMPAs efforts." Draft RMPA/EIS, p. 2-1. But as BLM points out:

> the U.S. District Court for the District of Idaho has issued a preliminary injunction, preventing the BLM from implementing the 2019 amendments, but not vacating them or their Records of Decision. Because the 2019 RODs were not vacated, the decisions from the 2019 amendment effort remain the GRSG management language in the BLM's RMPs. Under this alternative the BLM would apply the applicable management from those 2019 efforts.

Draft RMPA/EIS, p. ES-4; *see also W. Watersheds Project v. Schneider*, 417 F. Supp.3d 1319, 1335 (D. Idaho 2019). While BLM prepared supplemental EISs in 2020 to address and clarify the issues identified in the Court's injunction, the court has not lifted the preliminary injunction. *See* Draft RMPA/EIS, p. 1-3.

Alternative 2 offers improved coordination with states and a more flexible approach. But under the current circumstances, BLM likely cannot select Alternative 2, as the preliminary injunction remains in place. The BLM has not offered any explanation on how it might go about implementing Alternative 2 (which, in many respects, strikes a reasonable balance between rangewide and local decision-making), nor have any efforts been made in the litigation to seek relief from the preliminary injunction. Without additional explanation or efforts on BLM's part, this alternative appears to be an unrealistic choice.

If BLM is construing the decision in *W. Watersheds Project v. Schneider* as requiring a rangewide analysis in a single document, that interpretation is improper. The United States District Court for the District of Idaho, when it enjoined implementation of the 2019 ARMPAs, stated:

> Here, the six EISs at issue are State specific despite clear evidence in the record that the sage grouse range covers multiple states and that a key factor – connectivity of habitat – requires a large-scale analysis that transcends the boundaries of any single State. The BLM is in a unique position, as compared to each individual State, to conduct an analysis that evaluates the cumulative impacts of each State plan – and BLM's own actions – over the entire range of the sage grouse. While courts must give deference to an agency's scope decision, the BLM's focus on individual States required a robust cumulative impacts analysis given the range of the sage grouse. Because that is lacking, the plaintiffs are likely to succeed in their claim that the BLM's EISs do not contain a sufficient cumulative impacts analysis under NEPA and, most importantly, do not contain any justification for that failure.

417 F. Supp. 3d at 1333. The Court's decision does not require BLM to undertake a rangewide analysis in a single document; rather, it requires BLM to revisit its cumulative impacts analysis to account for rangewide impacts. Here, BLM has used this language as a pretext to apply one-size-fits-all land use provisions across a variety of different GRSG subpopulations, ecological

conditions, and political boundaries.[13] The BLM has therefore ignored the crux of the Court's decision, which was to improve the agency's cumulative impacts analysis.

C. Alternative 3

The BLM has not offered Alternative 3 in good faith. The Draft RMPA/EIS states that "[a]ll of the BLM's alternatives comply with the direction in FLPMA that public lands be managed 'on the basis of multiple use and sustained yield' (FLPMA Sec. 102(a)(7))." Draft RMPA/EIS, p. 2-6. This is patently false. Alternative 3 is in blatant violation of BLM's multiple-use mandate because it would preclude all forms of resource use and development across GRSG habitat and recommend all GRSG habitat for withdrawal from entry and location under the mining laws, eviscerating most of the western U.S. economy and the Biden Administration's ambitious climate agenda in the process.

D. Alternative 4

Alternative 4 is presented as being similar to Alternatives 1 and 2, but there are several critical differences between these Alternatives, including "update[d] [HMA] boundaries and associated management," and "management associated with some of the major minimization measures (e.g., disturbance cap, adaptive management)." Draft RMPA/EIS, p. 2-2. Alternative 4 is most like Alternative 5, but with unnecessary technical divergences, including, but not limited to: (1) inclusion of HMAs outside of locally determined Population Management Areas ("PMUs"), resulting in approximately 2 million more acres of HMA rangewide; (2) more stringent limitations on siting energy project and transmission ROWs; and (3) less flexible disturbance cap exceptions. These differences appear to have been put forth arbitrarily, as BLM does not attempt to explain why they were added and how they will promote GRSG conservation.

E. Alternative 5

In the Preferred Alternative, Alternative 5, BLM's stated intentions are to designate habitat in better alignment with state habitat designations and in accordance with new science and information. Draft RMPA/EIS App'x 3, pp. 3-3 through 3-4, 3-9. Alternative 5 also does not include ACECs, the senseless technical restrictions in Alternative 4. Alternative 5 would likewise decrease total HMA acreage by one-half of a percent rangewide, by 4.7% in Montana, 4% in Oregon, and just under 1% in Idaho and Nevada, as compared to Alternative 1. Draft RMPA/EIS 2-12 (Table 2-3).

But the acreage amounts alone do not tell the whole story. Although Alternative 5 reduces overall HMA, it shifts some HMA from GHMA to PHMA, resulting in approximately 7% more PHMA across all states than Alternatives 1 and 2. *See* Draft RMPA/EIS, p. 4-30. This shift is more acutely felt in Idaho and Oregon, where PHMA would increase by 9% in Idaho and by 37% in Oregon. *See* Draft RMPA/EIS, p. 2-12 (Table 2-3). These increases significantly restrict the ability to reasonably pursue new mineral targets and to develop new mine projects in these states. In Montana, the increase to PHMA is more modest—less than 1% compared to Alternative 1. *Id.* Both PHMA and GHMA acreage appear to decrease slightly in southwest

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[13] If BLM were to make state-specific adjustments in records of decisions for each of the smaller planning units, such as Nevada and Northeastern California, this "solution" would not make up for its inadequate environmental analysis – in fact, it makes the errors even more legally egregious because the records of decision are likely to include decisions or information that were not included in the Draft RMPA/EIS and available for public review and comment.

Montana. Nevertheless, Alternative 5 would retain a significant amount of PHMA in southwest Montana in areas important for locatable minerals exploration and development, particularly for minerals that have been deemed critical or important for building a more modern and sustainable economy.

F. Alternative 6

Alternative 6 is the same as Alternative 5 but with ACECs. The issues with Alternative 6 are identified in the above discussion on Alternative 5, and this comment letter's discussion of the problems with BLM's proposed ACECs (along with Barrick's previous comment letter).

VI. STATE-SPECIFIC COMMENTS

A. Nevada

1. Habitat Management Area Delineations

a. Using plan maintenance to update Nevada's HMA maps violates BLM's RMP regulations and Nevada policy.

Nevada is unique among the states because its delineation of HMAs in Nevada is "informed by a science-based modeling process" and "can be updated as new data become available." Draft RMPA/EIS, App'x 3, p. 3-10. This is the reason its plans are referred to as "as maintained" – the maintenance process is performed under a categorical exclusion on a semi-regular basis. The model incorporates several data inputs, including telemetry data and modeled environmental factors, to generate both a "habitat suitability index" and a "space use index." 2019 Nevada Greater Sage-Grouse Conservation Plan, p. 35. The resulting indices are then intersected to determine HMA boundaries. *Id.* at p. 37. This means that Nevada's HMA boundaries are actively updated without a regional or rangewide planning process.

The first iteration of the model was developed in 2014 with the USGS publication: Coates et al., Spatially explicit modeling of greater sage-grouse (Centrocercus urophasianus) habitat in Nevada and northeastern California: a decision support-tool for management, Open-File Report 2014-1163. However, several issues with the model were quickly identified. For example, during the 2015 planning process, BLM (in the 2015 FEIS) and the State of Nevada (in its 2014 Nevada Greater Sage-Grouse Conservation Plan) proposed HMA maps using the USGS model. The maps varied widely in terms of acreage and HMA categorization. App'x 3, p. 3-11 ("[T]he [BLM's] Proposed Alternative included about 1.2 million, or five percent, more [HMA acres] than the State's Alternative.").

Nevada subsequently revised its HMA maps to remove modeled HMA from outside of the NDOW/SETT delineated PMUs[14] and to update the model based on new science and information (Coates et al., 2016). The BLM was unsuccessful in updating the HMA map in the NV/CA ARMPA to reflect these changes during litigation challenging implementation of the 2015 and 2019 ARMPAs. Ultimately, BLM updated the HMA map through a "plan maintenance" action in 2022. The BLM, Plan Maintenance #5 for the 2015 Nevada and Northeastern California Sub-Region Greater Sage-Grouse Record of Decision and Approved Resources Management Plan Amendment, May 12, 2022. Nevada BLM is in the process of evaluating its

[14] Nevada removed HMAs outside of PMUs because "[a]reas … outside of PMUs have not been occupied by grouse for decades …" Draft RMPA/EIS, App'x 3, p. 3-12.

HMA maps once again, and it is anticipated that, even without this planning process, the Nevada HMA delineations will be updated to largely mirror those that are reflected in Appendix 3 of the Draft RMPA/EIS.

As specified in BLM's land use planning regulations, plan maintenance is reserved for changes necessary "to reflect minor changes in data" and "**shall not result in expansion in the scope of resource uses or restrictions, or change the terms, conditions, and decisions of the approved plan**." 43 C.F.R. § 1610.5-4 (emphasis added). Federal courts recognized early in the GRSG planning process that "[t]he decision to designate certain lands as particular kinds of sage-grouse habitat affects subsequent management decisions on those lands." *W. Expl., LLC v. U.S. Dep't of the Interior*, 250 F. Supp. 3d 718, 749 (D. Nev. 2017). The fact that "plan maintenance" actions of this sort are processed under categorical exclusions when they restrict land uses in this manner is even more disturbing.

Plan maintenance also occurs without "formal public involvement and interagency coordination … or the preparation of an environmental assessment or environmental impact statement." *Id.* While we agree that a "central strength" of Nevada's HMA mapping process is the ability "to improve over time as additional information is collected and new mapping products and techniques become available," this flexibility should not come at the expense of critical public vetting from interested stakeholders. Draft RMPA/EIS, p. 3-11. Keeping with Nevada policy in its 2019 Conservation Plan, "stakeholders [must] be encouraged to participate in the [mapping] process by submitting relevant information" to the agencies involved in the process. 2019 Nevada Greater Sage-Grouse Conservation Plan, p. 37. But it is a stretch to call what BLM is doing when it updates Nevada HMA boundaries "plan maintenance" – for example, shifts from GHMA to PHMA will have significant impacts on project proponents and operators and may make projects subject to a disturbance cap that were not during earlier stages of the feasibility or permitting process.

Accordingly, periodic updates to Nevada's HMA maps necessarily alter the applicability of management restrictions on different resource uses on public lands and eschew any meaningful public vetting process, making plan maintenance an unacceptable tool for such updates. If BLM is to continue to use "plan maintenance" to update HMAs, it needs to evaluate those changes under an environmental assessment (not a categorical exclusion) to ensure stakeholders participate and are able to comment on proposed changes and methodology.

b. The 2024 model updates are deficient under NEPA.

At the end of 2022, BLM once again decided to begin the process of updating the USGS model that delineates HMAs in Nevada. While BLM published the "draft" results of the model update as HMA maps presented in Appendix 1, "[t]he final version of the USGS HMA model was not published in time for inclusion in the BLM's 2024 Draft EIS." Draft RMPA/EIS, App'x 3, p. 3-12. The BLM did not notify the public that the final model (Milligan et al., 2024) and HMA maps were available for review until May 24, 2024—20 days before comments were due.

The public, consequently, had little opportunity to examine and to comment meaningfully on the previously unpublished model, including data inputs, assumptions, and sensitivity calibrations.[15] The BLM did disclose that the HMA maps in Appendix 3 were merely "an

[15] For example, the model update "did not include anthropogenic factors … such as roads and transmission lines." Although the authors recognized that these features "could … be important drivers of sage-grouse selection and demographic responses," they were selectively omitted because the "objective

estimate of how HMA model results may change as the model continue to be refined" and that there would "likely be differences in the spatial distribution of HMAs between the Draft EIS version and the final published version." DEIS, App'x 3, p. 3-12. However, Tables 1 through 5 of the supplemental document titled "Nevada and California Bureau of Land Management Greater Sage-Grouse Habitat Management Area Considerations" show considerable differences between the draft and final model results. For example, more than 600,000 acres of GHMA, HMA, and non-habitat in the draft Alternative 5 HMA map were elevated to PHMA.

These changes have real, on-the-ground impacts on project proponents across federal public lands in Nevada. Moreover, the lack of upfront information, minimal transparency, and significant changes in where management restrictions would apply is exactly why the 2015 ARMPAs were challenged in federal court in Nevada. *See W. Expl., LLC v. U.S. Dep't of the Interior*, 250 F. Supp. 3d 718, 750 (D. Nev. 2017) ("While the addition of SFA did not change the management decisions already contemplated in the DEIS, the change affects where those decisions would apply such that the public did not have enough information to be able to meaningfully participate in the EIS process."). As such, BLM should prepare a draft environmental impact statement that includes the final maps and provides the public with adequate opportunity to review and comment on the final data set.

c. BLM ignores state-defined population areas in HMA delineations.

Habitat Management Area maps for Alternatives 3 and 4 ignore the PMUs prescribed by Nevada's SETT and NDOW by mapping new HMAs in areas outside of PMUs, thereby extending resource use restrictions to new areas. Population Management Units are "[g]eneral delineation[s] of sage-grouse populations in Nevada," and are defined in a "[c]ollaborative process with NDOW biologists and the SETT." 2019 Nevada Greater Sage-Grouse Conservation Plan, pp. 38-39. Nevada specifically omitted HMAs modeled outside of PMUs during the 2015 planning process because "[a]reas … outside of PMUs have not been occupied by grouse for decades." Draft RMPA/EIS, App'x 3, p. 3-12. Additionally, anthropogenic disturbance projects located within PMUs trigger federal agency consultation with the SETT. 2019 Nevada Greater Sage-Grouse Conservation Plan, p. 40. By disregarding PMUs, BLM has ignored decades of state experience in managing GRSG, triggering significant federalism concerns.

2. The Draft RMPA/EIS fails to consider impacts to Nevada's Compensation Credit System.

Nevada has been a pioneer in GRSG management, monitoring techniques, and scientific research for decades. In the early 2000s, starting with a governor-appointed task force, Nevada developed a Conservation Strategy that identified challenges, offered potential solutions, and laid the groundwork for the formation of local area working groups and PMUs. Nevada's Conservation Strategy provided guidance for developing plans, and subsequent legislative endorsements in 2004 and 2010 reinforced Nevada's commitment to conserve the species. Between Nevada's first state plan in 2004 and the present, resource management

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was to predict sage-grouse habitat as a function of natural environmental characteristics across the landscape." Milligan et al., Greater Sage-Grouse Habitat of Nevada and Northeastern California—Integrating Space Use, Habitat Selection, and Survival Indices to Guide Areas for Habitat Management, p. 36, Open-File Report 2024-1018 (2024). This decision unfortunately resulted in the placement of modeled HMAs atop of existing disturbance, roads, and communities.

agencies have implemented conservation projects and instituted policies to support the State's conservation goals.

As BLM has developed its national GRSG planning strategy and implemented revisions to land use plans to provide regulatory mechanisms to conserve the GRSG and its habitat, Nevada pursued solutions of its own. The Governor issued Executive Order 2012-09, which established the Greater Sage-grouse Advisory Committee (now the SETT) to provide update recommendations for GRSG conservation in Nevada to preclude the need to list the species under the Endangered Species Act and provide an alternative for consideration in BLM land use plan revision process in Nevada. The Governor then appointed the Sagebrush Ecosystem Council ("SEC") on January 4, 2013, and the body was memorialized into statute during the 2013 Legislative Session. *See* Nevada Revised Statute ("NRS") 232.162.

The SEC establishes and carries out strategies for conservation of the GRSG and sagebrush ecosystems in the State and manages land that includes those ecosystems. *Id.* The SEC performs this task, in part, by:

- "[e]stablish[ing] and carry[ing] out a long-term system for carrying out strategies to manage sagebrush ecosystems in [the] State using an adaptive management framework and providing for input from interested persons and governmental entities" (NRS 232.162(7)(c));

- "[e]stablish[ing] a program to mitigate damage to sagebrush ecosystems in this State by authorizing a system that awards credits to persons, federal and state agencies, local governments and nonprofit organizations to protect, enhance or restore sagebrush ecosystems" (NRS 232.162(7)(e));

- "[s]olicit[ing] suggestions and information and, if necessary, prioritize projects concerning the enhancement of the landscape, the restoration of habitat, the reduction of nonnative grasses and plants and the mitigation of damage to or the expansion of scientific knowledge of sagebrush ecosystems" (NRS 232.162(7)(f)); and

- "[c]oordinat[ing] and facilitate[ing] discussion among persons, federal and state agencies and local governments concerning maintenance of sagebrush ecosystems and conservation of the greater sage grouse" (NRS 232.162(7)(i)).

Even though the SEC is one of the essential state entities BLM should have coordinated with on this amendment process, it was not consulted until after the Draft RMPA/EIS was published and is not listed as a cooperating agency in the document. *See* Draft RMPA/EIS, p. 5-3 through 5-4. And while NDOW is listed as a cooperating agency, NDOW communicated to BLM that it preferred to fully reinstate the 2015 plans, but BLM's Draft RMPA/EIS does not include any information to that effect. NDOW's concerns that the document was confusing, disjointed, and difficult to understand were apparently ignored as well.

The Draft RMPA/EIS fails to recognize the cornerstone of Nevada's Sagebrush Ecosystem Program ("SEP"):[16] the CCS. The CCS is a comprehensive mitigation banking

[16] Nevada's Sagebrush Ecosystem Program "is an integrated, multi-disciplined, multi-agency effort with a shared goal of addressing the threats and challenges to this critical ecosystem for today and into the future." SEP, About Us, https://sagebrusheco.nv.gov/About/About/ (accessed on May 30, 2024). The

system that was created by regulation in 2019 by the SEC as part of an integrated approach to conserving GRSG populations and habitat. Any person or entity that proposed an activity or project on public lands subject to state or federal review, approval or authorization, that will cause an anthropogenic disturbance is required to use the CCS. Nevada Administrative Code 232.460(1). The sole reference to the program in the Draft RMPA/EIS is in the discussion of cumulative impacts:

> Required mitigation in NV is through the Conservation Credit System (CCS) managed by the State of Nevada Sagebrush Ecosystem Program. The goal of the CCS is to generate a net benefit of greater sage-grouse habitat on public lands, but it may be adapted to support the ongoing preservation, enhancement, and restoration of NV sagebrush ecosystem.

Draft RMPA/EIS, p. 4-229. The first of its kind in the nation, it is inconceivable that the Draft RMPA/EIS does not discuss the CCS and evaluate how it has and will continue to affect GRSG habitat in Nevada.

Administered by the SETT, the CCS mitigates impacts to GRSG habitat from anthropogenic disturbances, which are also the focus of this rangewide planning effort, by offsetting "debit projects" (i.e., disturbance projects) with consistent and durable "credit projects" (i.e., mitigation projects). At the end of 2023, the CCS program had conserved nearly 30,000 acres of valuable GRSG habitat since its inception. *See* State of Nevada, CCS 2023 Performance Report, p. 4. Since the initiation of the CCS, Nevada credit project proponents have spent millions of dollars to develop and secure credit projects to conserve these acres of GRSG habitat. *Id.* But BLM did not consult with the SETT in the development of this Draft RMPA/EIS. *See* Draft RMPA/EIS, p. 5-3 through 5-4. After receiving the opportunity to review the Draft RMPA/EIS during the public comment period, the SETT has apparently drafted over 250+ comments for BLM's consideration. SETT's CCS performance reports, semi-annual reports to the Governor, and habitat modeling publications contain significant important information and data that BLM should have reviewed and incorporated into the DEIS, all of which are available on the SEP's website.

Nevada's state plans and mitigation banking systems have identified primary threats to GRSG habitat; provided specific guidance on how to reduce those threats based on local area conditions, resistance and resilience regimes, and ecological site conditions; and created a public-private partnership to develop mitigation and restoration projects to offset anthropogenic disturbances. The BLM's shocking lack of consideration of these State sagebrush conservation programs and processes demonstrates BLM's oversight and overreach in this planning process.

The CCS, combined with federal support and cooperation, has made huge strides toward conserving GRSG and eliminating the need for a federal listing decision, all without unduly restricting responsible development. Draft RMPA/EIS, p. 4-229. But there is no substantive discussion of the credit system in the Draft RMPA/EIS, its approach to compensatory mitigation, and how it could be impacted by new management decisions proposed in the Draft RMPA/EIS. And perhaps more importantly, there is no discussion of how implementation of the CCS has impacted habitat or will impact habitat going forward. The cumulative effects section of the document is particularly deficient, as the CCS is a reasonably foreseeable future action with substantial impacts on GRSG habitat.

SEP was created by former Nevada Governor Brian Sandoval by Executive Order 2012-19 in 2012 and was later codified into law by the Nevada Legislature in 2013. *Id.*

3. The proposed allocation exception criteria are deficient.

In a notable departure from the 2015 NV/CA ARMPA, the 2019 NV/CA ARMPA revised and simplified the process to exempt certain proposed projects from management restrictions within GRSG HMAs in the Nevada and Northeastern California planning region, provided they meet specific criteria. The decision to include these "allocation exception criteria" recognizes that "landscape level mapping may not accurately reflect on-the-ground conditions" and that ground-truthing may justify departures from modeled HMA boundaries. 2018 NV/CA FEIS, p. 2-7. The 2019 NV/CA ARMPA's allocation exception criteria also acknowledge that impacts can be offset by voluntary compensatory mitigation, without regard to modeled HMA boundaries, and that project renewals/reauthorizations and expansions of existing infrastructure are often justified when there are no additional impacts.

The New Alternatives propose to include only some of these criteria and to eliminate others, including the most common-sense exceptions. Without explanation, BLM is proposing to remove the ability of project proponents to seek exceptions by offsetting impacts using the mitigation hierarchy and compensatory mitigation. Alternative 5 would also eliminate the exception under which renewals, reauthorizations, or expansions of existing infrastructure that do not result in direct, indirect, or cumulative impacts to GRSG and its habitat may be excepted from HMA allocations and their applicable management restrictions. The Draft RMPA/EIS offers little to no explanation for these changes; nonetheless, these criteria promote flexibility in project approvals, while simultaneously protecting GRSG and acknowledging the inherent limitations of large-scale modeling. *See* Draft RMPA/EIS, p. 2-19 ("The habitat management area boundaries are not intended to represent a survey-grade habitat boundary, may include results of large-scale modeling, and are not to be used exclusively for habitat determinations at a project or site-level scale.").

Barrick strongly recommends that BLM's adopted management approach incorporates all the allocation exception criteria included in the 2019 NV/CA ARMPA and applies them to each of the planning region RMPs.

B. Montana, Idaho, and Oregon

1. Inclusion of wildfire, subdivision, and urban disturbances in the disturbance cap numerator should be rejected.

In Montana, Alternative 5 not only retains Alternative 1's inclusion of wildfire and agricultural disturbances in the numerator for project-scale disturbance calculations, but it also includes subdivisions and urban disturbances. Draft RMPA/EIS, pp. 2-29 through 2-30. Adding these types of disturbances to the numerator might force the cap to be reached in Montana sooner than in other states, even under Montana's slightly higher project-level cap (5% versus 3%). Take, for instance, southwest Montana which is generally comprised of approximately 40% private lands and 60% federal lands divided between BLM and the United States Forest Service. Most private lands sustain livestock production, row crops, and hay cultivation. Future development on any BLM land in southwest Montana was already difficult given the disturbance cap calculation that must account agricultural usage across private lands, forested lands susceptible to and with a history of forest fires, and large volume of PHMA. Now, however, with the inclusion of subdivisions under Alternative 5, any future development becomes almost impossible.

For the same reasons that subdivision disturbance should not be included in the numerator calculations, wildfire disturbance should also not be included, regardless of the selected alternative. Draft RMPA/EIS, p. 2-30. Correspondingly, Barrick supports that wildfire disturbance is not included in the numerator calculations in other states in Alternatives 1, 2, 4, 5, and 6. *Id.* Alternative 3's inclusion of wildfire in the disturbance calculations in all states should be rejected.

2. BLM should reconsider density caps.

In Montana, Oregon, and Idaho, BLM currently enforces "density caps" of 1 energy or mining facility per 640 acres in PHMA in a project analysis area, as reflected in Alternative 1. Alternatives 3 through 6 would retain density caps in these states. Barrick opposes retention of density caps in BLM's adopted approach for a number of reasons.

First, density caps (like disturbance caps) encourage development in undeveloped areas that have not yet hit the cap. Second, density caps pit different types of uses against one another—renewable energy, utilities, various types of mining—and will create a race to develop, which is bad policy when it comes to public lands. Third, density caps create practical implementation challenges, including but not limited to a lack of clarity as to what constitutes a "facility" under these caps. Fourth, adoption of density caps in the 2015 ARMPAs was based on guidance in the NTT Report. *See* 2015 ID/MT ARMPA, p. 1-22. Not only is the NTT Report thirteen years old, but it makes one-size-fits all, landscape-scale recommendations that are not rooted in locally applicable science or local needs. [17] Accordingly, BLM should issue a revised Draft RMPA/EIS that either provides clearer guidance about how to implement these density caps and additionally specifies that such caps do not apply to locatable minerals activities (as discussed above) or, preferably, removes the density caps in all states.

3. Oregon's one percent per decade disturbance rate limitation should be eliminated.

In Oregon, under the existing plan represented by Alternative 1, BLM not only limits disturbance to 3% for the project-level and habitat-level disturbance caps under all alternatives, but it also imposes a rate increase restriction, prohibiting disturbance in PHMA from increasing more than "1% increase per decade" "since implementing the cap." Draft RMPA/EIS, App'x 2, p. 2-OR-3; *see also* 2015 Oregon ARMPA, pp. 2-6 through 2-7 (MD SSS 3 and MD SSS 4), E-1, E-6. Lacking in the Draft RMPA/EIS is a clear discussion about the historical effectiveness of this restriction in preserving GRSG habitat or improving population numbers and whether it has been exceeded, or whether it has been effective in preserving habitat or improving sage-grouse population numbers. It is also not clear in the Draft RMPA/EIS text whether the preferred alternative, Alternative 5, or any of the other alternatives would retain the "1% increase per decade" cap and, if so, exactly how it would practically be measured and implemented in a way that is transparent and predictable for stakeholders.

Unless BLM can demonstrate that retention of this draconian decade-by-decade cap would continue to fit the purpose and need of the Draft RMPA/EIS, it should be eliminated.

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[17] The NTT Report has been criticized by many stakeholders throughout this planning process and should not continue to serve as the sole or primary basis for rationalizing the density and disturbance caps. *See, e.g.,* Scoping Comment Letter from American Exploration & Mining Association (Feb. 8, 2022) (Submission ID SCP-1-500204359); Scoping Comment Letter from National Mining Association (Feb. 8, 2022) (Submission ID SCP-1-500204346).

Without any further analysis about the historical implementation of this cap, or its effectiveness, a supplemental RMPA/EIS is warranted if BLM intends to keep this cap as part of its management efforts going forward. Such a cap presents too many practical difficulties for agencies to make compliance determinations and for developers to make investment decisions.

4. Retaining ACECs and Key Research Natural Resource Areas in Oregon requires more analysis.

Although no new ACECs would be proposed in Oregon, it is concerning that Oregon (under each of the alternatives) would retain its many previously designated ACECs and Key Research Natural Resources Areas (effectively ACECs). The record is lacking with scientific support for retaining these ACEC designated areas, especially in light of BLMs own assertion that current management practices are not sufficient to prevent GRSG population decline.

5. Montana's Alternative 5 contains overly restrictive right-of-way provisions.

In the Draft RMPA/EIS, Alternative 5 would be more restrictive in Montana than under Alternative 1 for both major and minor ROWs when near active leks and in crucial winter ranges. Specifically, under Alternative 5, major and minor ROWs are *excluded* in PHMA within 0.6 miles of active leks and crucial winter range when outside of designated corridors, but "avoidance" in the in the remainder of PHMA. This is more restrictive than under Alternative 1 in Montana, where PHMA in the Dillon Field office is *open* to ROWs with RDFs and buffers, and PHMAs in other Field Offices are "avoidance" for ROWs. *See* Draft RMPA/EIS, p. 2-161. This is also more restrictive than in other states under Alternatives 5, where all PHMA would be "avoidance" for minor ROWs and "avoidance" for even major ROWs, subject to "micro-siting" requirements to avoid siting near active leks and connectivity corridors. *See* Draft RMPA/EIS, pp. 2-96 through 2-98. The Draft RMPA/EIS fails to justify why ROW restrictions should be more restrictive in Montana than in other states. Accordingly, these overly restrictive ROW provisions in Montana should be changed to be the more flexible standards of other states.

VII. SUMMARY OF KEY RECOMMENDATIONS

Considering these many concerns, Barrick recommends that BLM undertake the following actions:

1. Incorporate local input to develop draft supplemental environmental impact statements on a smaller planning scale and incorporate changes to new land use plan amendments.

It is clear from the many errors, omissions, and missteps that BLM needs to revisit its approach to this planning effort. Comprehensive state, local, and stakeholder input is key to improving this planning process. The BLM should develop draft EISs that address the issues raised in these comments (and others). These supplements should ensure that the proposed land use plans align with state mitigation systems, mapping, and development requirements.

2. Clarify confusing language in the existing land use plan amendments.

This planning process ignores aspects of the 2015 plans that have proven problematic in practice and should be addressed. Specifically, the required design features ("RDFs") are

confusing as written. Among the issues Barrick has seen agencies and project proponents struggle with are:[18]

- General RDF 21 of the NV/CA ARMPA requires project proponents to "[o]utfit all reservoirs, pits, tanks, troughs or similar features with appropriate type and number of wildlife escape ramps." It is obvious that the reference to "pits" cannot mean the open pits where mining activities occur, so the language should be clarified. Additionally, there is debate over what "similar features" this requirement applies to. Further, this requirement should provide an exception for features that wildlife cannot access (such as closed-top tanks and open-top tanks that are netted).

- Locatable RDF 1 of the NV/CA ARMPA requires project proponents to "[i]nstall noise shields to comply with noise restrictions (see Action SSS 7) where drilling during breeding, nesting, brood-rearing, and/or wintering seasons. Apply GRSG seasonal timing restrictions when noise restrictions cannot be met." Here, the use of "and/or" is confusing and does not provide sufficient direction to the agency as to what seasons must be considered versus those that may be discretionary. Further, it is unclear what is meant by "noise shields."

- Locatable RDF 3 of the NV/CA ARMPA requires project proponents to "[r]estrict pit and impoundment construction to reduce or eliminate augmenting threats from West Nile virus." Here, it is unclear what is meant by "restrict." Again, this language should clearly exclude mining.

- Locatable RDF 7 of the NV/CA ARMPA requires project proponents to "[c]over (e.g., fine mesh netting or use other effective techniques) all pits and tanks regardless of size to reduce GRSG mortality." Here, the reference to "regardless of size" is troubling because it might be read to suggest that mining companies are supposed to cover their open pits where mining activities are occurring, which is impossible where those pits can be a mile across. Covering them would be infeasible and unnecessary. The language should explicitly exclude mining pits.

These RDFs are used as examples, as many of the RDFs are confusing, unclear, or technically impracticable. Applicability of RDFs and management decisions frequently causes confusion, and sometimes that confusion boils over into litigation. *See Bartell Ranch, LLC v. McCullough*, 3:21-cv-00080-MMD-CLB (D. Nev., Aug. 11, 2022) (ECF No. 270, pp. 11-15) (rebutting arguments over applicability of certain RDFs and management decisions to locatable minerals projects). Now that the agency and operators have attempted to interpret and implement the RDFs since their adoption in the 2015 ARMPA, BLM should assemble a technical team of experts and affected stakeholders to review, revise, and improve the RDFs in each planning area so it is clearer how they are supposed to be implemented and where, as written, it may be impossible to do so.

[18] This section cites to specific RDFs in the 2015 NV/CA ARMPAs. However, these comments are intended to apply equally to the same or similar RDFs or best management practices that are required in other planning regions.

3. Standardize discussion of applicable portions of GRSG land use plans, including required design features, in NEPA analyses.

The BLM should adopt a standard form to be included in NEPA analyses across projects as an appendix or supplemental GRSG report that clarifies GRSG design and management decision obligations. The appendix would lay out the potential GRSG management decisions and RDFs that could apply and walk readers through whether the provisions apply to the project at hand. The appendix would also contain an additional column that would clarify whether the project proponent is voluntarily implementing required design features. The document would be particularly useful in Nevada, where some management decisions (such as the disturbance cap) and RDFs are not applicable to locatable minerals projects, but the agency either evaluates the management decision in the document anyway or the project proponent voluntarily decides to include the design feature as an applicant committed environmental protection measure. This type of standardized document would increase public understanding of the applicable requirements, voluntary commitments, and clarify decision-making should a project be challenged in court.

A good example of what this document might look like is available as part of the Bald Mountain Juniper Project environmental impact statement, Appendix D, Greater Sage-Grouse Plan Amendment Conformance, available on BLM's e-Planning website.

VIII. CONCLUSION

Barrick appreciates the opportunity to comment on the Draft RMPA/EIS. But BLM must recognize the shortfalls in its planning process and environmental analysis. The effort to combat GRSG habitat and population decline has always been a collaborative one with states and critical stakeholders, and BLM's divergence in this planning process has produced a document that fails to comply with NEPA and FLPMA's multiple-use mandate. The BLM must slow this process down, listen to the parties with on-the-ground experience, and account for state approaches to conservation and mitigation. Draft supplemental EISs are needed on the variety of issues identified in this comment letter; attempting to address these errors in state- or region-specific records of decision would be legally inadequate.

In addition to the above, Barrick urges BLM to use all available management tools to reduce the threat of wildfire and invasive plant species proliferation. This could be done by implementing appropriate pre-fire suppression measures in areas where dangerous buildups of flammable fuels are creating increased wildfire risks. As BLM has itself identified numerous times, wildfire and invasive plant species remain the primary threat to GRSG habitat. But without adequate focus and funding, these factors will continue to drive population declines.

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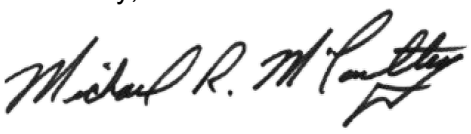
If BLM continues to dedicate resources to combating anthropogenic disturbances instead of the real threats, it will jeopardize the significant investments Barrick has made in the GRSG and its habitat at the expense of development vital to the company and the nation's economy. Barrick urges BLM to reconsider its decision to proceed with the proposed land use plan amendments in this manner.

If you have any questions about these comments, please do not hesitate to contact me at (801) 990-4806.

Sincerely,



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Please accept these comments on the Sage Grouse Management Plan Draft Environmental Impact Statement (EIS) submitted by the Albany County Conservancy. The Albany County Conservancy is a grassroots 501(c)(3) non-profit organization comprised of concerned residents. ACC works to protect and preserve the open spaces of Southeastern Wyoming with a focus on habitat, history and wildlife through community outreach and education efforts, as well as direct advocacy.

Unfortunately, the ACC cannot endorse any of the proposed Sage Grouse Plan alternatives at this time. Each contains some element of hope for maintaining populations of sagebrush obligates, but may, in fact, fall short of that goal, while at the same time presenting unsustainable trade-offs.

The sagebrush steppe is home to a rich tapestry of over 300 species. How the BLM manages sagebrush habitat has far-reaching implications for an entire ecosystem of plants and animals that need our help, including pronghorn, mule deer, pygmy rabbits, ferruginous hawks, sage thrashers, parasol buckwheat, and golden eagles.

- **Grant Wyoming's irreplaceable sage-grouse habitats the strongest protections.** Wyoming is home to over a third of the world's sage-grouse population because it contains the best remaining habitat. Chief among these, the Golden Triangle in southwest Wyoming boasts the densest populations of sage-grouse on the planet. The unmatched habitat in the Golden Triangle should be granted the strongest possible protections. Bates Hole sage-grouse habitat as well as Sage Grouse core area land management zone 2 south of Rawlins.

- **Direct development away from healthy habitat.** There are many demands on BLM lands, but there is also ample acreage available to meet those demands. Infrastructure and energy development should be directed outside of Priority Habitat Management Areas to ensure sage grouse are afforded the quality habitat they need to thrive.
- **Rely on the best available science to guide management decisions.** Efforts to conserve the sage-grouse and its habitat can best be achieved by taking advantage of the latest research and science. The final management plans should lean heavily on the wealth of new data available to allow nimble, adaptive management responses to aberrant declines in sage-grouse populations across jurisdictional boundaries.
- **Maintain gene flow and habitat connectivity.** Wyoming has the most robust population of remaining sage grouse, but we shouldn't keep all our eggs in that one basket. Critical connectivity areas, on the Montana border in northeast Wyoming and on the Utah border in southwest Wyoming, and on the southeast Wyoming border between Northern Colorado and southeastern Wyoming including leks noted on Cherokee Park road as you enter Arapaho National Forest must remain open to allow for gene flow and dispersal between Wyoming's populations and those in neighboring states. In the Laramie and Shirley basin ecosystems "one of the last remaining intake grasslands in the world" The Laramie Mule Creek Pass Lek must be protected – From Laramie head north on Hwy 30 for 42 miles. Turn right onto Fetterman Rd and continue for 10.5 miles.

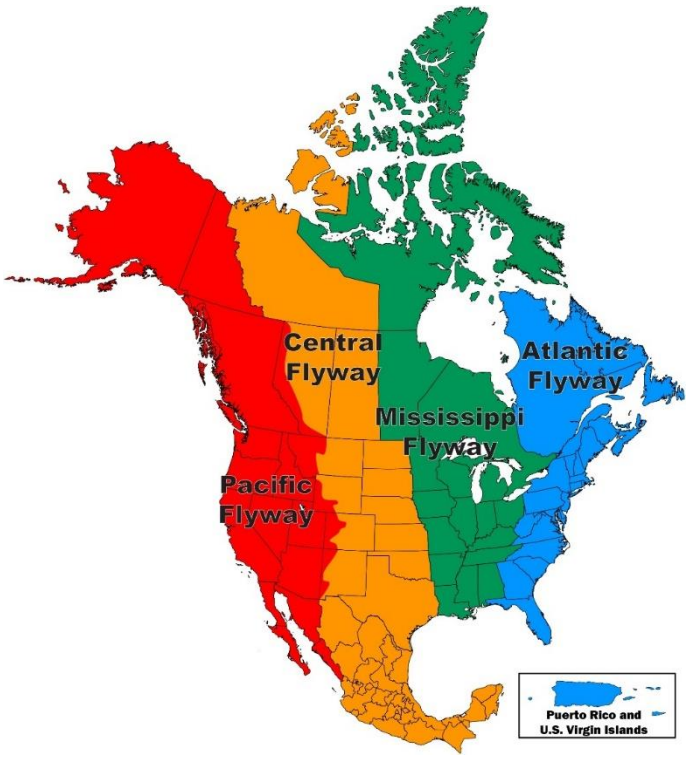
Stay left at the Y intersection and continue on Fetterman Rd for another 22.5 miles to the junction with Mule Creek Rd. Turn left onto Mule Creek Rd and continue for 9 miles. The lek will be on the left side of the road. Walcot and Saratoga Pass Creek 24 Lek - From I-80, at Walcott Junction, take Wyoming Hwy 130 south about 8 miles. Turn left on County Rd 406 and travel east for approximately 2 miles. Lek is on the right side of the road. Also the Baggs lek known as the Upper Red Creek Lek ,the CASPER County Road Reservoir Lek, the Bates Hole Lek, as well as the Medicine Bow lek.

- **Take bold action to conserve the habitat sage-grouse rely on.** Western states, federal agencies, and private partners have been working together for over a decade to halt sage-grouse population declines, yet population indicators show we are losing this bird across its broader range. Because of this, stronger conservation measures should be adopted at every turn when weighing various management actions.

Wyoming is home to the largest, healthiest remaining swaths of sagebrush on the planet.

Sage grouse like golden eagles are an indicator species as are golden eagles. The lands encompassing the Hanna, Shirley and Laramie Basins of Southeast Wyoming, and adjoining hill and mountain slopes are the **most important focal habitat areas** for **golden eagles in North America**. Sage grouse in this area share habitat with the largest concentration of golden eagles in North America. The highest concentration of migratory and breeding populations (floater and resident breeding eagles) exists within this habitat. This area is also a major North American flyway, known as the Central Flyway. This American flyway and habitat is important to other bird and bat species, such as burrowing owl, sage grouse, and others.

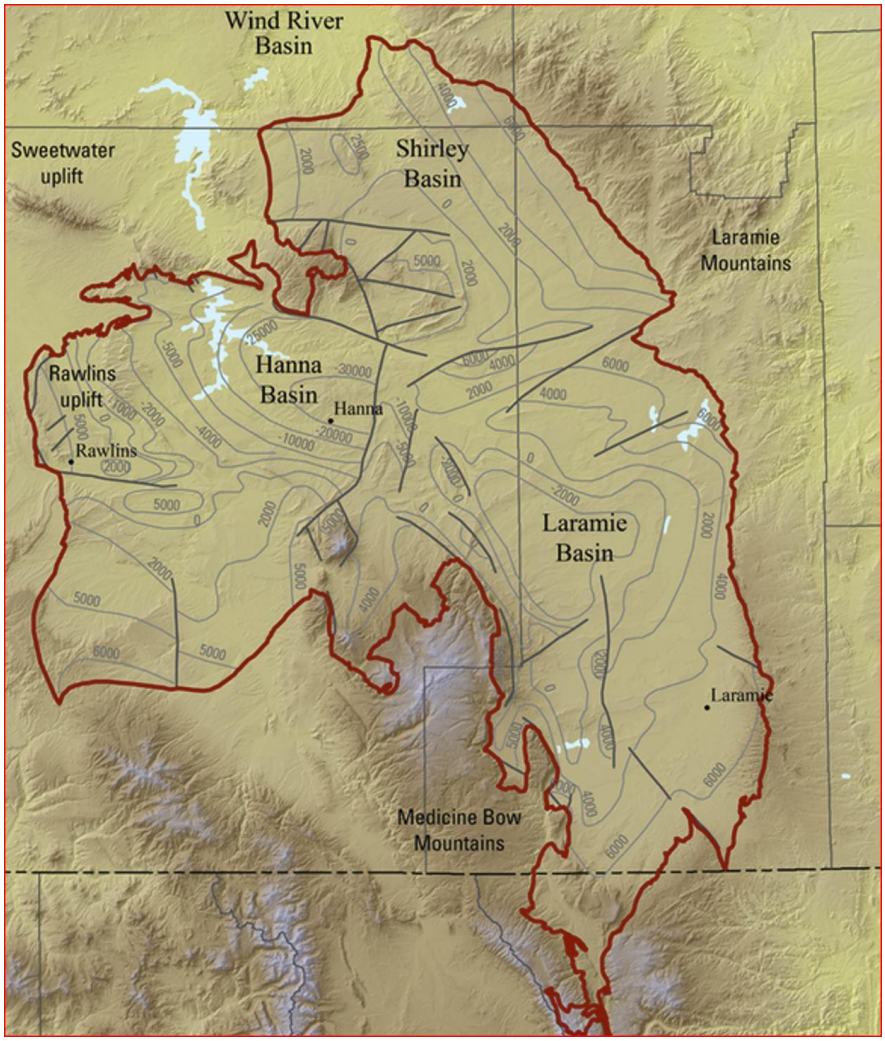
Map of U.S. Fish & Wildlife Service (USFWS) Migratory Bird Program Administrative Flyways in North America (Credit: USFWS)
https://www.fws.gov/media/migratorybirdprogramadministrativeflywaysstateandprovincemapjpg)



The Laramie and Shirley Basins support year-round populations of golden eagles, as well as a large

migratory population of northern golden eagles that overwinter in this area. This area has historically been a hotspot for golden eagle recruitment and dispersal, supporting the recovery of golden eagle populations in neighboring states.

This basin habitat is largely native high-desert grasslands and is considered to be some of the last intact grassland habitat in the world. There are hill and mountain slope areas here as well,



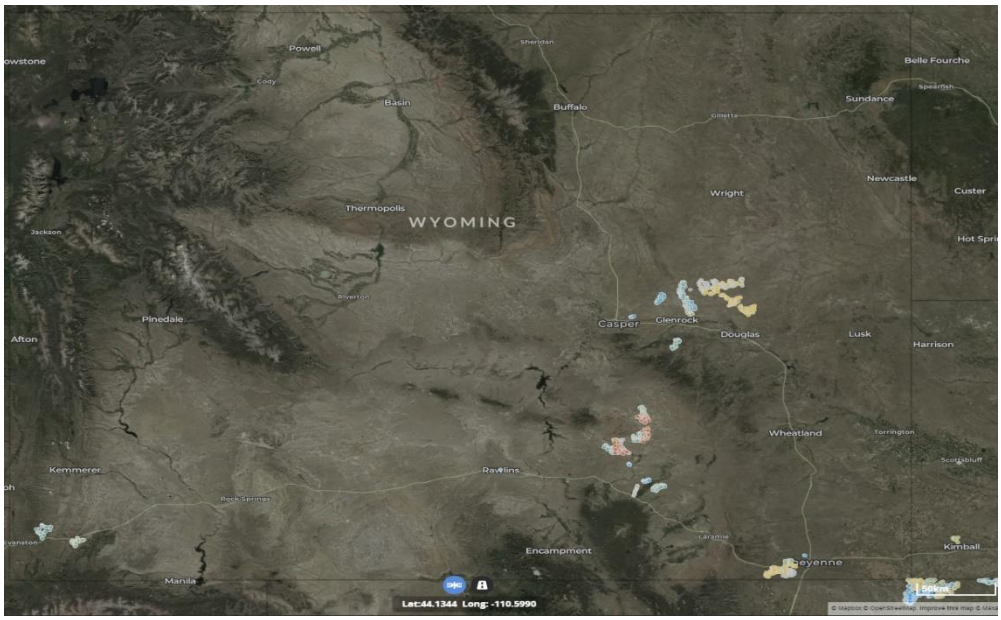
as the basin is encompassed by the Laramie Mountains, Medicine Bow Mountains, and the Sweetwater Uplift.

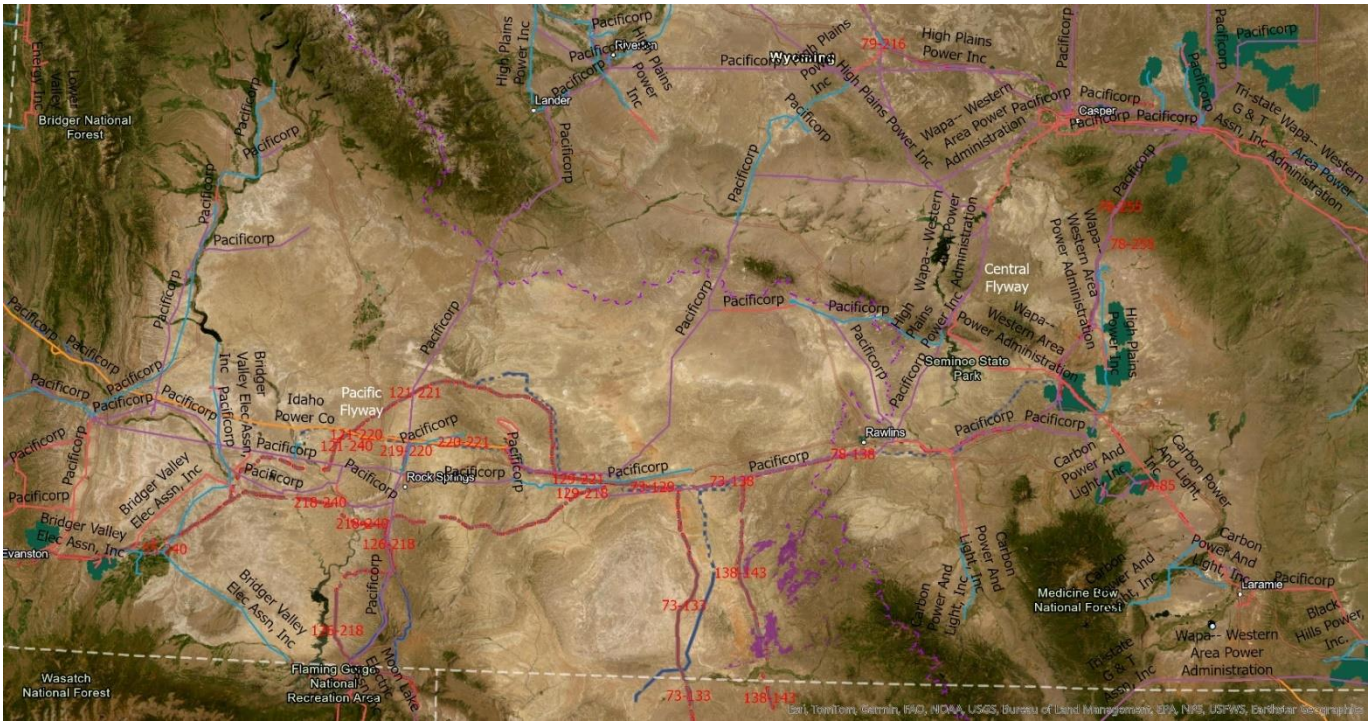
Map of Shirley, Laramie and Hanna Basins in Southeast Wyoming. Map provided by Raptor Biologist Mike Lockhart, original source unknown.

Resource Based Exclusion Areas

The Laramie and Shirley Basins should be avoided at all costs when it comes to industrial energy development, not only because of its biological and ecological significance, but also because this area is heavily concentrated with existing large-scale industrial wind energy projects and their associated transmission lines.

Map showing existing industrial wind turbine locations in Wyoming. There are approx.. 2,000 turbines in Wyoming currently, with more to be installed in the coming years.
https://eerscmap.usgs.gov/uswtdb/viewer/#8.16/41.725/-106.15





Map of transmission lines in the Southern/Central half of Wyoming.

Due to the cumulative impacts of 21 operational wind energy projects in Southeast Wyoming, golden eagles are facing risk with the area becoming a “population sink”. A comment letter submitted regarding the Two Rivers Wind project in Southeast Wyoming, written by Audubon Society and Wyoming Outdoor Council states:
Inadequate protections in a Golden Eagle stronghold experiencing high growth in wind development risks the project area becoming a “population sink” (aka: ecological trap) – an area Golden Eagles are strongly attracted to where they experience high mortality, leading to continued population level declines. When year-round breeding eagles experience mortalities, “floater” eagles are likely to be the ones that fill territory vacancies[1], which themselves also face the same fate, a downward population spiral becomes possible[2].
The Draft Environmental Assessment (EA) [Two Rivers Wind] states on page 79 that these existing wind developments “have likely resulted in the encroachment of breeding and foraging habitats use by eagles and have potentially led to the displacement of eagles from historically occupied territories. Golden Eagle territories within the Project area are likely limited by the amount of available nesting substrate, and it is unknown how much flexibility breeding pairs have to adjust their boundaries without a territorial pair abandoning or being driven away from their territory by neighboring eagles.
The situation for Golden Eagles in Shirley Basin is concerning and is expected to get worse, according to Mike Lockhart, who has spent approximately 15 years working on energy development impacts on raptor populations (personal communication).

It is our fear the same is true of area Sage grouse population decreases. Both golden eagles and sage grouse are indicator species when it comes to this high desert grass land and sage step ecosystem.

The utility of disturbance caps

While the 3% and/or 5% disturbance caps seem at first glance like tight limits, the details are entirely in how any particular project distributes that allowance. Keep in mind that 5% of a square mile is still 32 acres – a substantial area. A wind energy plant most likely would not require anything like 3% (nearly 20 acres) for roads and foundations. Yet, we have learned through peer-reviewed research that wind energy developers desire exactly the same ground, level and sage-covered, for their turbine foundations that sagebrush obligates, including Greater Sage Grouse, desire for their winter range (Smith et al (2020) and Milligan et al (2021)). Moreover, applications for wind energy plants that we have analyzed routinely ask for a variance to avoid having to remove foundation below three feet of depth during decommissioning, when even the four feet stipulated in Wyoming is probably inadequate to re-establish Wyoming Big Sagebrush.

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[1] Grainger, H.W., J. David Wiens, P.R. Law, M.R. Fuller, T.L. Hunt, D.E. Driscoll, R.E. Jackman. 2017. Quantifying the demographic cost of human-related mortality to a raptor populations. PLoS ONE 12(2): e0172232.
[2] https://wyofile.com/biologist-wind-development-outpaces-slow-work-of-tracking-eagles/

What we have just said regarding wind energy plants applies equally to oil and gas fields and solar energy farms. The size of the cap seems less important than how it is applied.

In addition, the ground disturbances, despite seeming modest, still allow establishment of noxious weeds, particularly Downy Brome, which is a problem both for its competition with more desirable grasses and for its effects promoting wildfires. Hotter wildfires are claimed to be most responsible for the decline of Greater Sage Grouse habitat. According to the EIS…

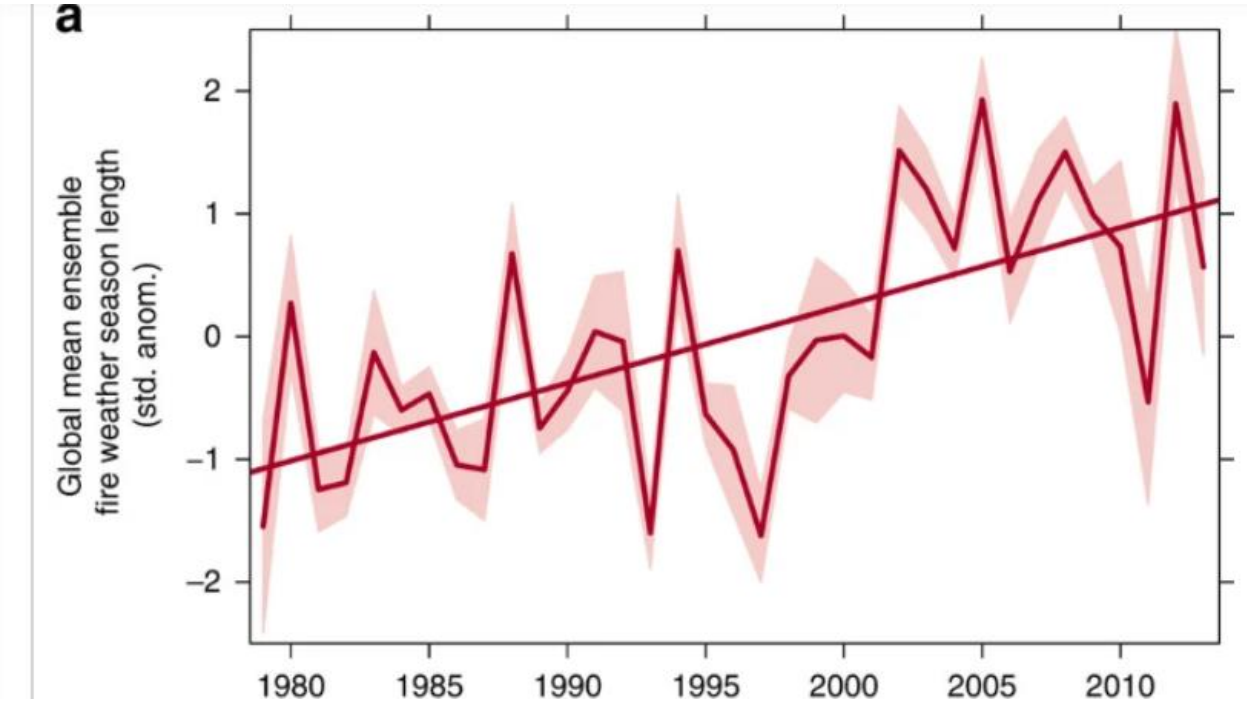
“Analyses of west-wide satellite maps determined sagebrush availability across all land ownerships declined by approximately 3 percent (1.9 million acres) between 2012 and 2018. Nearly 60 percent of the sagebrush losses occurred on BLM-managed lands (approximately 1.1 million acres range wide). Sixteen adaptive management habitat triggers were tripped between 2015 – 2020, mostly the result of sagebrush loss to wildfires…”

The spread of noxious weeds contributes to this problem in addition to offering especially capable competition for plant resources.

On the other hand, managed fires are a useful tool for preventing precisely the habitat loss of concern here. This entire issue is, we believe, is defocused by pointing to “climate change”. For example, from the EIS again,

“Changing climatic conditions have resulted in higher temperatures and more severe droughts, which have led to longer wildfire seasons and larger, more frequent wildfires in the western US (Jolly et al. 2015; Dennison et al. 2014)...”

Figure 1, nearby, is taken from Jolly, et al, (Figure 2 in that reference) and shows the rising extent of wildfires worldwide since 1980 – the conclusion drawn is that climate change is somehow responsible. However, 1980 coincides with the start of the satellite record of burned area, and also coincides with a nadir in burned acreage as determined by all sources of data. We think that management practices combined with increasing population form a better explanation for this trend and explains well other related trends such as rising insurance claims also alleged to result from climate change.



Ref: Jolly, W., Cochrane, M., Freeborn, P. et al. Climate-induced variations in global wildfire danger from 1979 to 2013. Nat Commun 6, 7537 (2015). https://doi.org/10.1038/ncomms8537

Finally, to the extent that climate change, perforce, demands management to reduce CO2 emissions, we would simply emphasize that no one in the U.S. has any control over CO2 levels because the gas is well mixed in the atmosphere and its concentration will be determined in the future by sources outside North America.

Economics

Alternatives outlined in the EIS provide occasional frightening consequences for state economies along with occasional counter-intuitive results. For example, Alternative 3 which is the most restrictive, would lead to a reduction in economic output related to fluid minerals extraction of $12.8 billion across the eight affected states. However, it would lead to $8 billion in Wyoming alone, which is roughly 22% of state GDP. Estimates for Alternative 4 would result in about one-half as much reduction in Wyoming GDP. Preferred Alternative 5, presumably, would reduce this further, but Alternative 5 displays the counterintuitive result of increasing potential in Colorado and Idaho due to more areas available for leasing and addition of more exceptions and waivers and oil and gas production revenue and well development expenditures are expected to decrease in Wyoming due to particulars of managed PHMA. Such disparate results will undoubtedly lead to court battles much like those in the PEIS for the West Wide Energy Corridor (WWEC).

With regard to grazing, even using preferred Alternative 5, there are likely to be severe impacts to local economies, but with the additional complication that grazing is a useful strategy for

avoiding fine fuels loading of important habitat to avoid hot wildfires. Thus do strategies produce conflicting results.

Cumulative impacts

According to the EIS (p. 560) ...

“A cumulative impact is the impact on the environment that results from the incremental impact of the action, when added to other past, present, and reasonably foreseeable actions, regardless of what agency (federal or nonfederal) or person undertakes such actions… Cumulative impacts can result from individually minor, but collectively significant actions taking place over time….”

We are heartened to read that BLM recognizes cumulative impacts as important and worthy of particular mention. However, in the past, EAs and EISs produced by BLM have perhaps mentioned cumulative impacts, but then did not analyze them, or have not even itemized cumulative impacts. This is so even in development that we believed to be disastrously impactful on raptors including Bald and Golden eagles, even by BLMs own admission.

Regarding utility scale wind and solar, Alternative 5 would keep GHMA open for utility scale developments. Alternative 1 held GHMA open only in Idaho and Wyoming for solar and wind. We view this as loosening rules for places with excellent resources; so, we do not understand why such is not also true of Utah, science Utah has excellent solar resources. Under Alternatives 5, open rights of way and utility wind/solar development would fragment GRSG habitat and there would be no buffers with habitat management areas, nor would mitigation be required. It would result in a greater potential for invasive species and noxious weeds throughout the open ROW areas, plus impacts to scenic views.

Conclusion

Our reading of the EIS demonstrates the enormous complexity of this issue. Moreover, there are many interested parties with highly divergent interests. For our part, we have a keen interest in sustaining populations of sagebrush obligates, including Greater Sage Grouse and have in the past expressed our deep interest in sustaining raptors and migratory birds and protecting cultural resources. Perhaps, the intersection of such complex considerations leads to an empty set of management options for BLM, but we do not support any alternative that we read here.

Once again, thank you for the opportunity to provide public input.

Respectfully Submitted,

Anne Brande, Executive Director Albany County Conservancy

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Submitted electronically to:
https://eplanning.blm.gov/eplanning-ui/project/2016719/595/8020241/comment

June 13, 2024

Bureau of Land Management
Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101
ATTN: HQGRSG RMPA
BLM_HQ_GRSG_Planning@blm.gov

RE: Comments on BLM's Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning, Federal Register Vol. 89, No. 52

Dear BLM:

I. Introduction

Rex Minerals Ltd. and its U.S. subsidiary, Hog Ranch Minerals Inc. (Rex), are providing these comments in response to the Bureau of Land Management's (BLM's) Notice of Availability published in the Federal Register on March 15, 2024 (Vol. 89, No. 52, pp. 18963 - 18967) seeking public comments on the Draft Greater Sage-Grouse (GRSG) Resource Management Plan Amendment (RMPA) and Draft Environmental Impact Statement (EIS). The Draft RMPA/EIS amends 77 BLM land use plans in 10 western states.

Rex's Hog Ranch Project area lies within the Surprise Resource Management Plan area, which is one of the 77 land use plans included in the Draft RMPA/EIS. This promising gold, silver and lithium[1] exploration and development target is located in northwestern Washoe County, Nevada. The southwestern quadrant of the Hog Ranch property overlaps the Hayes Canyon Area of Critical Environmental Concern (ACEC). The project area was mined for gold from 1985 to 1992. The previous mining activities included mining six pits and mineral processing at a heap leach facility that produced approximately 200,000 ounces of gold. With the recent discovery of lithium at Hog Ranch, this project becomes an important critical minerals project in addition to its potential as a gold project. The project also contains elevated rubidium, another designated critical mineral, which warrants further investigation.

BLM's Northern California District Office/Applegate Field Office recently approved a Plan of Operations that authorizes 200 acres of surface disturbance for exploration drilling to evaluate

[1] The U.S. Geological Survey (USGS) designates lithium as a critical mineral.
See: https://www.energy.gov/sites/default/files/2023-07/preprint-frn-2023-critical-materials-list.pdf

the gold and lithium deposits that Rex has discovered at Hog Ranch. Prior to approving this Plan of Operations, BLM evaluated extensive biological and cultural resources baseline surveys including an on-the-ground GRSG habitat baseline survey. This survey showed that much of the Hog Ranch Project area is not high-value GRSG habitat. Consequently, the maps in the Draft RMPA/EIS that generalize this as a Priority Habitat Management Area (PHMA) are inaccurate and must not be used to guide any project-specific land use management decisions. In order to review and approve the Hog Ranch Exploration Plan of Operations, BLM prepared an Environmental Assessment (EA) and issued a Finding of No Significant Impact (FONSI) in May 2024. During preparation of the EA, BLM worked closely with local stakeholders, including Tribal governments, the Nevada Department of Wildlife and the Nevada Sagebrush Ecosystem Technical Team to assess potential impacts to cultural and biological resources. The BLM also considered public input during a 30-day public comment period for the EA, which did not yield any concerns or objections.

Rex has invested over ten million dollars over the past four years, in exploring for gold and lithium mineralization at Hog Ranch. This work has included geologic mapping and sampling, exploration drilling, metallurgical test work, hyperspectral and soils surveys, numerous geophysical surveys including gravity, magnetics, radiometrics, CSMAT, and three-dimensional IP, and water rights acquisition This significant investment, combined with the historical data (which included 2000 drill holes) has identified a 2.1 million ounce oxide gold resource and 0.15 million ounce sulfide gold resource.

In addition to Rex's gold exploration activities, recent work at Hog Ranch has also discovered a lithium claystone deposit in inter-caldera lake sediments in a geologic setting analogous to the Thacker Pass deposit, which is one of the world's largest known lithium deposits located in the 16-million year old the McDermitt Caldera in nearby Humboldt County, Nevada. Hog Ranch is also located in a 16-million year old caldera, the Cotton Creek Caldera. Lithium assays in drill holes originally drilled for gold have identified significant lithium mineralization including 12.2 meters at 971 parts per million (ppm) lithium in one hole. In response to this lithium discovery, Rex expanded its landholdings by locating over 700 new mining claims in 2023. With these additional claims, Rex currently controls a sizeable circa 35,000-acre land package at Hog Ranch consisting of 1,737 unpatented mining claims.

The exploration work authorized in the Plan of Operations has been designed to expand the existing gold mineral resource and to achieve the following objectives: double the existing gold mineral resource; convert the bulk of the existing mineral resource into the measured and indicated categories; and identify shallow open-pit oxide gold mineralization that will support a heap leach processing facility that can produce over 150,000 ounces of gold production per annum. The exploration project will also advance Rex's understanding of the extent and grade of the lithium claystone deposit and will also investigate the commercial viability of extracting rubidium and/or silver from the known gold resources.

II. BLM has Ignored Rex's February 2022 Scoping Comments

In February 2022, in response to BLM's November 22, 2021, Notice of Intent to prepare a GRSG EIS and Land Use Plans to amend the 2015 GRSG Land Use Plan Amendments, Rex submitted extensive comments on the issues that this Draft RMPA/EIS should evaluate. After reading the 2024 Draft RMPA/EIS, Rex has concluded that BLM has inappropriately ignored or dismissed several of the issues raised in our February 2022 scoping comments that focused on issues of significant national importance dealing with critical minerals. The following

critical minerals issues discussed in our February 2022 comments need to be evaluated in this Draft RMPA/EIS:

- The EIS Must Include Mineral Potential Data in the Planning Area.

- The EIS Must Consider How Reduced Mineral Production and Mineral Withdrawals Would Increase the Nation's Reliance on Foreign Minerals and Impede the Energy Transition. Although it was grossly deficient in its analysis of impacts to geology and minerals, the BLM at least acknowledged in its 2015 LUPAs that it was required to analyze the impact of a proposed withdrawal recommendation, as required by the National Environmental Policy Act (NEPA), and it must do so here.

- BLM Must Consolidate the SFA Withdrawal Analysis into the Draft RMPA/EIS. This analysis should not be evaluated in a separate NEPA document as that will result in unlawful and improper segmentation.

The following subsections discuss why these issues need to be evaluated in the Draft RMPA/EIS.

A. The Draft RMPA/EIS Must Include Mineral Potential Data in the Planning Area

Mineral exploration activities in the USA are still responsible for identifying vast new mineral discoveries. Most of the country has not been adequately explored for critical minerals, and this includes Rex's Hog Ranch Project, where while conducting gold exploration, Rex effectively accidentally discovered lithium and rubidium critical mineral mineralization.

As noted in our 2022 scoping comments, the 2015 NV/CA FEIS was deficient because it did not include a discussion of mineral potential throughout the planning area. In its draft EIS for the mineral withdrawal proposed in the 2015 LUPAs, BLM decided to cancel the withdrawal: the data showed sustained socioeconomic impacts from the withdrawal while it concluded that, over 20 years, mining would result in adverse effects to only 9,000 acres of GRSG range.[2]

Unfortunately, the 2024 Draft RMPA/EIS is equally deficient. There is no detailed discussion of the potential for the lands within the planning area to contain minerals, including critical minerals, to supply the U.S. with the minerals needed to support our economy, infrastructure, manufacturing sectors, and national defense, and to support the Nation's energy transition goals. At the very least, the Draft RMPA/EIS should include the information in the U.S. Geological Survey's (USGS') 2016 Mineral Potential Report (MPR), which assessed the mineral potential of the areas classified in the 2015 EIS documents and land use plan amendments (LUPAs) as Sagebrush Focal Areas (SFAs) that BLM recommended for mineral withdrawal.[3]

[2] *See* BLM, Final Supplemental Environmental Impact Statement, Greater Sage-Grouse, at 4-57 (Nov. 2020) (Explaining that the 2016 DEIS addressing mineral withdrawals "quantified the possible adverse effects from locatable mineral exploration and mining on the approximately 10 million acres of SFAs proposed for withdrawal, finding that they would be limited to approximately 9,000 acres rangewide of surface disturbance over 20 years, with approximately 0.58 percent of Greater Sage-Grouse male birds possibly affected per year. The other action alternatives evaluated in the 2016 SFA Draft EIS similarly demonstrated negligible benefit of the proposed withdrawal to Greater Sage-Grouse and its habitat"; concluding that "[c]onservation benefits of a future withdrawal would be minimal.").

[3] Mineral resources of the Sagebrush Focal Areas of Idaho, Montana, Nevada, Oregon, Utah and Wyoming, Scientific Investigations Report 2016-5089, https://pubs.er.usgs.gov/publication/sir20165089

The statement on Page 13-3-14 that "Within GRSG priority habitat management areas (PHMA), Nevada and California combined have about 147,160 existing open claims across 21,167,000 acres of BLM-administered locatable minerals," clearly indicates there is significant potential for conflicts between mineral exploration and development and GRSG habitat preservation given the large area of co-located mining claims and PHMA. This issue deserves much more discussion than a mere disclosure of the footprint of mining claims in lands designated as PHMA.

As noted on Page 13-3-14, "Nevada is one of the top hard-rock mining states." According to the USGS, in 2023, Nevada was the third highest non-fuel mineral producer in the U.S., with a value of $8.88 billion in mineral production.[4] Although Section 4.10.4 of the Draft RMPA/DEIS discloses that many of the alternatives would reduce mineral production, there is no meaningful analysis of the impacts to the 10 states in the planning area and to the Nation as a whole of how this reduced mineral production would require obtaining necessary minerals from other places, including adversarial foreign countries, and increase the Nation's reliance on imported minerals. This is an especially important issue for critical minerals like lithium and rubidium that are essential to the Nation's goals to reduce the use of fossil fuels and transition towards solar, wind, and other forms of renewable energy.

Because much of the Hog Ranch area is mapped incorrectly as PHMA, Rex is especially concerned that the mineral withdrawal proposed in Alternative 3 would categorically prevent exploration and development of the lithium, possible rubidium, and gold resources at Hog Ranch. We also worry that the restrictions associated with ACECs would interfere with exploration and development of the lithium target in the portion of the Hog Ranch property that overlaps the Hayes Canyon ACEC. This is contrary to statute, which provides for pre-discovery access to, use of, and occupancy rights on lands open to location for mineral exploration and development.[5] BLM must disclose and assess the impacts of its restrictions on valid existing rights such as our mining claims in a supplemental EIS that provides the public an opportunity to review and comment on that analysis.

B. The Draft RMPA/EIS Must Disclose How Reduced Mineral Production and the Mineral Withdrawals in Alternatives 1 and 3 Would Increase the Nation's Reliance on Foreign Minerals

BLM needs to prepare a Supplemental Draft RMPA/EIS that evaluates how the six alternatives it considers in the draft RMPA/EIS would reduce U.S. mineral production and increase our reliance on foreign minerals. Such analysis is required by NEPA, which demands that an EIS's environmental consequences analysis address, "[w]here applicable, economic and technical considerations."[6] "[W]hen the agency determines that economic or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss and give appropriate consideration to these effects on the human environment."[7]

[4] https://pubs.usgs.gov/publication/mcs2024, this value includes sand, gravel, and crushed stone.
[5] *See* 30 U.S.C. §22 (generally, "all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase").
[6] 40 C.F.R. § 1502.16(a)(10).
[7] *Id.* § 1502.16(b). We additionally note that NEPA's basic requirement that an agency assess the environmental effects of a proposed action generally means that it must assess the effects on climate change of a proposed action. *See 350 Mont. v. Haaland*, 50 F.4th 1254, 1263 (9th Cir. 2022); *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017). In a supplemental analysis, BLM should assess the climate change impacts of any aspect of the

This is an issue of national importance that needs to be carefully assessed in a Supplemental Draft RMPA/EIS given the skyrocketing demand for critical minerals and materials to support the energy transition. The International Energy Agency (IEA)[8] predicts soaring demand for critical minerals, including lithium and other battery minerals, and shows that lithium carbonate production is currently concentrated in China. The IEA states: "In clean energy transitions, lithium is the mineral facing the fastest demand growth."

Domestic lithium projects like Thacker Pass can help reduce China's dominance over lithium by both mining lithium ore and producing battery-grade lithium products. Future potential development of a lithium project at Hog Ranch could similarly help reduce the Nation's reliance on Chinese lithium and lithium-ion batteries. Given the national significance of this issue, adding it to the Final RMPA/EIS will not be sufficient. The public needs to be able to provide comments on this important issue, which requires BLM to prepare a Supplemental Draft RMPA/EIS.

The Supplemental Draft RMPA/EIS needs to evaluate the tradeoffs between increasing the country's dependence on foreign minerals versus ensuring more lands designated as PHMA are not impacted by mineral exploration and development. As discussed in Section III below, the Federal Land Policy and Management Act (FLPMA) requires BLM to balance these and other priorities. As written, the Draft RMPA/EIS does not balance these interests because it is mainly concerned with protecting GRSG habitat. This singular focus is inconsistent with the resource balancing and multiple use mandates in FLPMA.

BLM needs to rely on the USGS' expertise to update the mineral data considered in this Draft RMPA/EIS. BLM should ask the USGS to update its 2016 MPR and evaluate the mineral potential in the 69.2 million acres considered for mineral withdrawal in Alternative 3. BLM must conduct the necessary research and compilation of mineral potential data now, in conjunction with this Draft RMPA/EIS – it should not be done as an after-the-fact analysis associated with BLM's decision to pursue mineral withdrawals. Otherwise, there is deficient or nonexistent evaluation and disclosure in the RMPA/EIS for a meaningful evaluation of the geological and socioeconomic impacts of proposing a withdrawal in the first place. An updated MPR is imperative at this point because Alternative 1 recommends withdrawing the 10-million acre SFAs and Alternative 3 recommends withdrawing roughly 69.2 million acres of PHMA in the 10 western states in the planning area. In order for BLM and the public to fully evaluate the impacts associated with both Alternatives 1 and 3, the agency and the public need more information about the mineral potential on these lands.

1. *NEPA requires BLM to address the impact of recommended mineral withdrawals.*

The statement on Page 4-106: "Recommending areas for closure to the mining laws for locatable exploration or development does not restrict any activities and therefore, such recommendation does not have any impacts" is both inaccurate and ludicrous given the chilling effect this planning process and the potential for it to result in a substantial mineral withdrawal

alternatives it is considering (especially mineral withdrawals, designation of ACECs, and restriction on surface disturbance in PHMA) that might reduce the possibility of exploration for and development of critical mineral deposits.

[8] https://iea.blob.core.windows.net/assets/ee01701d-1d5c-4ba8-9df6-abeeac9de99a/GlobalCriticalMineralsOutlook2024.pdf

is having on mineral investment in lands with GRSG habitat. Further, in the 2015 and 2019 GRSG land use plan amendments, BLM acknowledged that a recommended mineral withdrawal did have impact. While grossly deficient, the 2015 LUPAs did acknowledge the requirement for and include some analysis of the effects of a mineral withdrawal, including that "[w]ithdrawal of areas from locatable mineral entry would prohibit the filing of new mining claims in those areas and reduce availability of locatable mineral resources."[9] In the 2019 RMPAs, BLM also at least acknowledged effects of mineral withdrawal, including effects on mineral development.[10]

Equally incorrect is the statement on Page 4-106: " . . . if minerals of interest are not known to occur on the lands within the withdrawal, then the withdrawal would not have an effect." This faulty logic completely dismisses the point that minerals cannot be discovered on lands that are withdrawn from mineral entry during the period of the withdrawal. This shortsighted statement fails to acknowledge that withdrawn lands may contain important minerals that are currently unknown but that could be discovered in the future if these lands were not off-limits to mineral exploration and development. Because the country and the world will need many minerals in the future, and may need different minerals than are currently identified, withdrawing lands is likely to jeopardize the country's future ability to satisfy its long-term mineral requirements. For example, the soaring demand for lithium for the lithium-ion batteries used to power electric vehicles and store electricity is a recent phenomenon. In 2015 and even 2019, this demand did not exist.

BLM's decision not to assess impacts of its proposed recommendation of mineral withdrawal violates NEPA, which requires that BLM assess "changes to the human environment from the proposed action or alternatives that are reasonably foreseeable."[11] The withdrawal is a reasonably foreseeable result of BLM's recommendation: as a result of its 2015 LUPAs' withdrawal recommendation, BLM "filed an application requesting the Assistant Secretary of the Interior for Land and Minerals Management to withdraw" nearly 3 million acres in Nevada. The Assistant Secretary approved this application and the effect was that upon publication of the proposed mineral withdrawal in the Federal Register, all of the lands subject to the application were segregated for a two year period—halting any new location of mining claims and creating significant uncertainty and impediments to any new exploration.[12]

Refusing to analyze the effects of a mineral withdrawal recommendation is also contrary to BLM's previous practice: when it recommended the SFA mineral withdrawals in the 2015 LUPAs, BLM addressed withdrawals in its impacts analysis, stating that the proposed "[w]ithdrawal from locatable mineral entry would result in long-term beneficial impacts on

[9] *Id.* at 4-305.
[10] 2020 FSEIS at 4-48–4-49.
[11] 40 C.F.R. 1508.1(g).
[12] Id. at 57,635. The withdrawal was only revoked when the 2019 RMPAs found that it was unnecessary for GRSG habitat conservation. 82 Fed. Reg. 47,248 (Oct. 11, 2017). "BLM determined the proposal to withdraw 10 million acres was unreasonable in light of the data that showed that mining affected less than 0.1 percent of Greater Sage-Grouse-occupied range." BLM, Final Supplemental Environmental Impact Statement, Greater Sage-Grouse, at 4-42 (Nov. 2020). A district court vacated that decision and required BLM to reassess mineral withdrawal. See W. Watersheds Project v. Bernhardt, 519 F. Supp. 3d 763, 789 (D. Idaho 2021).
Now, the Secretary has reopened the mineral withdrawal process that began with the 2015 LUPAs. See 86 Fed. Reg. 44,742 (Aug. 13, 2021). The concurrent withdrawal process is occurring simultaneous with the present RMPA process, Alternative 1 in the DEIS/RMPA would re-adopt the 2015 LUPAs that recommended the current withdrawal process. Oddly, given the clear connections between these two processes, BLM acts as if they are entirely independent actions that have no bearing on each other.

GRSG habitats associated with all seasonal life history requirements," would benefit wild horses and burros (WHB), and could reduce soil and vegetation disturbance.[13] BLM clearly analyzed effects should the mineral withdrawal be approved by the Secretary of the Interior, stating, for example: "If successful, withdrawal of all PHMA and GHMA from mineral entry under Alternative C would benefit riparian areas and wetlands in the planning area. Compared to Alternative A, many more acres of riparian habitats would be protected from disturbance."[14] Finally, and dispositively, in its section describing indicators for impacts on locatable minerals, BLM's first listed impact indicator was "[a]ctions that reduce availability and opportunity for development of a resource (e.g., mineral withdrawal)," and BLM assessed impacts of such actions: "[w]ithdrawal of areas from locatable mineral entry would prohibit the filing of new mining claims in those areas and reduce availability of locatable mineral resources."[15] BLM also addressed the effects of mineral withdrawal in its SEIS re-analyzing the 2019 RMPAs, including addressing effects of the withdrawal on mineral development.[16]

When an agency departs from past practice, it must provide a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored. It must, in short, explain why it has changed its policy."[17] Here, BLM provides no explanation why mineral withdrawal was analyzed as an effect of its mineral withdrawal recommendation in the EIS for the 2015 LUPAs but mineral withdrawal is not analyzed as an effect of its mineral withdrawal recommendation in the 2024 DEIS/RMPA.

Deferring the analysis of withdrawing lands from mineral development to a future, separate minerals withdrawal EIS essentially kicks the can down the road to retrospectively evaluate the impacts to minerals stemming from a decision that has already been made. This separation does not satisfy the forward-looking alternatives analysis mandates in NEPA that require federal agencies to take a hard look at the impacts of the alternatives carried forward for detailed analysis in a NEPA document.[18] As we discuss below, it also violates NEPA by segmenting the minerals withdrawal from the RMPA which requires disclosure and analysis of the foreseeable actions and impacts from a proposed mineral withdrawal.

C. BLM Must Not Separate the SFA Withdrawal Analysis from this NEPA Evaluation

In our February 2022 scoping comments, we strongly urged BLM to consolidate the SFA withdrawal analysis with this land use planning process and development of this Draft RMPA/EIS. In February 2022, we asserted that separating these analyses into two documents makes no sense. This separation is still nonsensical today. In fact, Alternative 1, the 2015 Proposed Action including the recommendation to withdraw the 10-million acre SFAs, and Alternative 3 to withdraw 69.2 million acres of PHMA demand a thorough evaluation of the impacts associated with these massive mineral withdrawals in this Draft RMPA/EIS.

BLM's statement (Page 4-106) that "Proposing and making a withdrawal is not a land use planning process" is an unpersuasive obfuscation that does not eliminate BLM's NEPA

[13] See BLM, Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement, at 4-31, 4-154, 4-97 (June 2015).
[14] *Id.* at 4-119.
[15] *Id.* at 4-305.
[16] 2020 FSEIS at 4-48–4-49.
[17] *CBS Corp. v. FCC*, 785 F.3d 699, 708 (D.C. Cir. 2015) (citation and internal quotation marks omitted).
[18] *See* 40 CFR § 1508.1(g) (an agency must consider effects, that is, "changes to the human environment from the proposed action or alternatives that are reasonably foreseeable").

obligations to thoroughly evaluate the impacts associated with each alternative considered in detail in the Draft RMPA/EIS. In this Draft RMPA/EIS, BLM must provide a detailed analysis of the impacts of withdrawing between 10 million acres of land under Alternative 1 and 69.2 million acres of public lands under Alternative 3 from operation of the Mining Law and putting these huge tracts of land off limits to mineral exploration and mining for at least twenty years. This analysis must include a thorough disclosure of the jobs and local and state tax revenues that will be lost if lands are withdrawn from mining. It must also discuss how these withdrawals would make it harder to find domestic sources of the minerals we need and lead to an increase in the Nation's reliance on foreign minerals.

The recommendation to withdraw the 10-million acre SFA in the 2015 RMPA/Final EIS is not a separate action from this Draft RMPA/EIS because Alternative 1 *is* the 2015 approved RMPAs:

> Alternative 1 includes the applicable elements of the 2015 Approved RMPAs (ARMPA) that are being analyzed for potential amendment. . . . This alternative also includes designation of some areas of PHMA as Sagebrush Focal Areas (SFA) with a recommendation to withdraw them from mineral location and entry under the Mining Law of 1872. . . . (Page ES-3)

BLM's scheme to separate the NEPA analysis of the 2015 SFA withdrawals from this 2024 NEPA analysis improperly splits the evaluation of the same proposed action into two different documents, which does not fulfill BLM's NEPA obligations. Similarly, the proposed withdrawal of 69.2 million acres under Alternative 3 requires a thorough analysis in this NEPA document—not in some future NEPA document prepared to implement Alternative 3 if that ends up being BLM's Preferred Alternative in the Final RMPA/EIS.[19]

"An agency impermissibly 'segments' NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and action thereby fails to address the true scope and impact of activities that should be under consideration."[20] Here, BLM has improperly segmented review of the DEIS/RMPA by suggesting that the withdrawal is a future possibility that may not occur. But this analysis is not entirely factual: the withdrawal is not a "future possibility" but a current reality: the Secretary is considering a mineral withdrawal recommended by the 2015 LUPAs—that is by Alternative 1.

FLPMA acknowledges that there may be a connection between the Secretary's withdrawals under FLPMA Section 204 and LUPAs developed under FLPMA Section 202. Section 202(e)(3) states that "[w]ithdrawals made pursuant to section 204 of this Act may be used in carrying out management decisions." That appears to be the case here: the withdrawal is a result of the management decision in the 2015 LUPAs. Therefore, BLM should not pretend that these processes are separate: the mineral withdrawal appears to be a connected action with

[19] Our concerns that BLM's Preferred Alternative in the future Final RMPA/EIS could be significantly different than the Preferred Alternative (Alternative 5) in this Draft RMPA/EIS are based on historic precedent. BLM's Preferred Alternative in the 2015 RMPAs added the SFAs, which was significantly different from the agency's preferred Alternative (or any of the other alternatives evaluated) in the 2014 Draft RMPA/EIS. This radical change led the U.S. District Court for the District of Nevada to rule that BLM violated NEPA by failing to prepare a supplemental EIS to evaluate the addition of the SFA to the 2015 Nevada and Northeastern California GRSG RMPA. *See W. Expl., LLC v. DOI*, 250 F. Supp. 3d 718 (D. Nev. 2017).

[20] *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).

the 2015 LUPAs and, hence, Alternative 1. In its analysis of Alternative 1, BLM must assess the effects of the mineral withdrawal that Alternative 1 inaugurates.

III. Alternative 3 Violates FLPMA's Multiple Use Mandate and the NEPA Definition of a Reasonable Alternative

The Draft RMPA/EIS acknowledges that the multiple use and sustained yield mandates in FLPMA are among the planning criteria that underpin this NEPA analysis. However, it appears that avoiding a determination by the U.S. Fish and Wildlife Service (USFWS) to determine that the GRSG should be listed as a threatened or endangered species under the Endangered Species Act is the real driver for this document. We are concerned with this approach for several reasons.

First, by elevating concerns that GRSG could become a federally listed threatened or endangered species, BLM has failed to achieve the appropriate resource balance that FLPMA demands including the explicit directive in Section 102(a)12, which requires "that the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands." Rex shares BLM's goal to keep the GRSG off of the list of federally threatened and endangered species; but moving forward by radically restricting and even prohibiting mining, livestock grazing and other Section 102(a) multiple uses violates FLPMA.

The severe restrictions and prohibitions under Alternative 3 underscore the extent to which BLM is considering subordinating its FLPMA multiple use obligations and taking draconian actions designed to persuade the USFWS from putting GRSG on the list of federally threatened and endangered species. Alternative 3 would categorically prohibit most multiple use activities on the 69.2 million acres that Alternative 3 designates as PHMA throughout the 10-state planning area.[21] Under Alternative 3, 69.2 million acres would be closed to: new leasing for fluid minerals, saleable minerals, mineral materials and nonenergy leasable minerals; development of renewable energy projects; location and entry under the U.S. Mining Law; livestock grazing; and rights of-way (ROWs) designations. This alternative includes 11,139,372 acres of ACECs specifically for GRSG management.

Although we recognize that an alternative that closes a particular area "to development does not necessarily violate the principle of multiple use," FLPMA requires that BLM strike a "delicate balance" between closing some areas to use and leaving others open to development.[22] Alternative 3 emphatically does not strike that balance. Instead, it puts a significant portion of the western United States off limits to development, including—pending the proposed mineral withdrawal—locatable mineral development. Because Alternative 3 violates FLPMA, it cannot be considered as a viable alternative pursuant to NEPA and should not be included in the Draft RMPA/EIS.

Second, Alternative 3 violates the Council on Environmental Quality's (CEQ's) regulations at 40 CFR 1500 *et seq.* that govern preparation of NEPA documents, including this Draft

[21] We note that BLM offers no justification based on reliable information and best available science for its proposal, in Alternative 3, to designate all GHMA as PHMA. This collapse of the distinction between GHMA and PHMA which BLM accepts in all other alternatives and which is based on best available science is contrary to statute and BLM policy.

[22] *N.M. ex rel. Richardson v. BLM*, 565 F.3d 683, 710 (10th Cir. 2009).

RMPA/EIS. The CEQ regulations require federal agencies to evaluate "reasonable alternatives." (40 CFR § 1502.14). 40 CFR § 1508.1 defines a reasonable alternative as "a range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action."

We recognize that it is possible that BLM's final decision on the draft EIS/RMPA will be governed by CEQ's 2024 NEPA implementing regulations.[23] The new NEPA regulations that will become effective on July 1, 2024, still require federal agencies to identify and assess *reasonable* alternatives (40 CFR 15002(e)) and do not change the definition of "reasonable alternatives." In the 2024 NEPA regulations, 40 CFR 1508.1(hh) defines a "reasonable alternative" to mean: "A reasonable range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action."

The severe economic impacts of Alternative 3 are described in Section 4.12 of the Draft RMPA/EIS. Section 4.12.4 includes a detailed discussion of the devasting socioeconomic impacts associated with Alternative 3. For illustrative purposes, the following is a partial list of these impacts:

- Oil and Gas:
  On annual average, oil and gas production revenue and well development expenditures in the analysis area for 8 states combined is expected to result in about 25,000 to 36,000 fewer total jobs (about 11,000 to 14,000 fewer direct jobs), about $2.0 million to $2.9 billion less in total labor income (about $1.2 million to $1.6 billion less in direct labor income), and about $9.2 billion to $12.8 billion less in economic output (about $6.5 billion to $8.5 billion less in direct economic output) than under Alternative 1.

  Management actions that restrict oil and gas development in PHMA would likely adversely affect fiscal revenues and could contribute to future state and local government budget shortfalls, especially in jurisdictions that rely on the taxation of minerals in place of income taxes or where taxes on mineral production currently represent the single largest source of revenue. These budget shortfalls may affect the ability of states and local governments to maintain infrastructure and provide public services at current levels. Insufficient funding for infrastructure and public services would adversely affect quality of life in affected communities and could further limit rural residents' access to educational opportunities, health care, and social safety net programs.

- Locatable minerals:
  The reduction in economic activity could result in impacts on market and nonmarket conditions, such as reductions in jobs, labor income, economic output, tax revenue, public services, access to lifestyles and culture associated with mining. Additionally, for those mining operators with existing mining claims that might survive a withdrawal, costs could increase due to the additional requirement to verify mining claim validity before BLM will approve a notice or plan of operations. These impacts could put a lot of strain on communities, especially those that are dependent on the mining industry.

[23] *See NRDC v. U.S. Forest Serv.*, 421 F.3d 797, 800 n.3 (9th Cir. 2005) ("The regulations . . . have since been supplanted. However, the former regulations are applicable here because they were in effect when" the relevant decision was made.).

- Livestock Grazing:
  On annual average, livestock grazing on allotments where PHMA accounted for at least 15 percent of the acreage in the analysis areas for all 10 states combined is expected to result in about 2,000 fewer total jobs (about 841 fewer direct jobs), $120 million less in total labor income (about $67.6 million less in direct labor income), and about $380 million less in economic output (about $204 million less in direct economic output), compared with Alternative 1. The restrictions on livestock grazing in large portions of federal allotments could impact the economic resilience of ranching and farming communities.

  Making PHMA unavailable to livestock grazing could result in increases in costs to ranchers and farmers who would have to find alternatives for federal forage for their livestock. The cost increases may lead to increases in meat prices if passed on to consumers and, in the long term, decreases in availability of meat and animal products. Increases in prices and decreases in availability of meat and animal products could put additional strain on households, especially those with lower incomes in rural areas, where food prices tend to be higher and a larger percentage of their disposable income goes towards food purchases...There could be higher potential for closures of ranches or ranches selling lands to create ranchettes, which could have substantial impacts on social and economic conditions in some surrounding communities. These impacts include impacts on communities' well-being and social cohesion and impacts on access and quality of the ranching lifestyle, culture, and sense of place for those who rely on access to forage from federal land for their farming and ranching operations as well as for those who are part of the farming and ranching communities of interest and value livestock grazing on public lands.

These excepts vividly illustrate the extremely adverse socioeconomic impacts associated with Alternative 3 and clearly demonstrate it is not an "economically feasible" alternative as defined in any version of the CEQ's NEPA regulations. Inclusion of Alternative 3 in the Draft RMPA/DEIS is a fatal flaw that must be remedied by preparation of a Supplemental Draft RMPA/DEIS that eliminates Alternative 3 from detailed consideration on the grounds that it is economically infeasible and that it is also inconsistent with FLPMA's multiple use mandates. BLM must comply with both the NEPA regulations and FLPMA. BLM is not authorized to jettison its multiple use management obligations and manage public lands with severe multiple use prohibitions and restrictions in order to minimize the likelihood that the USFWS will put the GRSG on the list of federally threatened and endangered species. BLM can only consider reasonable alternatives as defined by NEPA while authorizing a balance of multiple uses that fulfill BLM's FLPMA obligations.

IV. BLM must accurately designate HMAs in the Hog Ranch area.

As we have noted, BLM has evaluated a GRSG habitat baseline survey for the Hog Ranch Project area which showed that much of the Project area is not high-value GRSG habitat: it was either potential habitat or non-habitat. For example, "[v]egetation in the Bells Survey Area consists largely of sagebrush communities that offer potential habitat to GRSG" but BLM did

not note any GRSG occupation there.[24] And "[t]he Grass Valley lek had no GRSG observed in 2020 or 2021."[25]

BLM's designation of most of the Hog Ranch Project area as PHMA thus is not based on best available science. This contravenes NEPA and BLM policy. Under NEPA, BLM must "ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents" and "make use of reliable existing data and resources."[26] Additionally, in Nevada, BLM treats GRSG as a sensitive species,[27] and "[w]hen administering the [BLM] sensitive species program, all information shall conform to the standards and guidelines established under the Information Quality Act."[28] BLM's Information Quality Guidelines provide that "BLM operates on the principle of collecting or acquiring timely information that it judges to be the best available consistent with its mission requirements."[29]

We note that BLM appears to consider potential habitat or non-habitat as PHMA.[30] But BLM's own Glossary of Common Terms states that habitat is "[a]n environment that *meets* a specific set of physical, biological, temporal, or spatial characteristics that satisfy the requirements of a plant or animal species or group of species for part or all of their life cycle."[31] BLM must provide a "reasoned analysis" justifying its departure from this definition of habitat.[32] Further, BLM cannot manage an area for habitat where that area is not habitat. The Supreme Court recently rejected the US Fish and Wildlife Service's (USFWS's) decision to manage habitat for the dusky gopher frog where the area could not presently constitute habitat for the species. The Court held, regarding designation of critical habitat under the Endangered Species Act, that the Secretary of the Interior is not authorized "to designate the area as critical habitat unless it is also habitat for the species."[33]

BLM must specify that any designation of HMA based on its modelling is always subject to ground truthing and the agency must and will consider site-specific information in its decision making at a project level.

V. Except for Alternative 2, the alternatives proposed in the DEIS/RMPA are not consistent with the Nevada Sage-grouse Conservation Plan and violate FLPMA and NEPA.

FLPMA requires that land use plans "be consistent with other Federal agency, state, and local plans to the maximum extent consistent with Federal law and FLPMA provisions."[34] Thus, "to

[24] BLM, Hog Ranch Exploration Project Environmental Assessment, at 3-26 (Sept. 2023).
[25] *Id.*
[26] 40 C.F.R. § 1502.23.
[27] BLM, Nevada Special Status Species List, at 2 (Sept. 2023) https://www.blm.gov/sites/default/files/docs/2023-11/NV-IM-2024-003%20att%201%20BLM%20Nevada%20Special%20Status%20Species%20List_0.pdf
[28] BLM, Manual M-6840.2.
[29] BLM, Information Quality Guidelines, at 9 (Apr. 2, 2018).
[30] *See* DEIS at Glossary-6 (defining PHMA as "[a]reas prioritized for managing Greater Sage-Grouse populations . . . [t]hese management areas include high-quality habitat and may also include areas with poor or potential habitat, and nonhabitat").
[31] "Habitat" in BLM, Glossary of Common BLM Terms, https://eplanning.blm.gov/public_projects/lup/22652/34861/36285/1.2_Glossary_of_Common_BLM_Terms.pdf (emphasis added).
[32] *CBS Corp. v. FCC*, 785 F.3d 699, 708 (D.C. Cir. 2015).
[33] *Weyerhaeuser Co. v. United States Fish & Wildlife Serv.*, 586 U.S. 9, 20 (2018).
[34] BLM, H-1601-1, at 6; *see also* 43 U.S.C. § 1712(c)(9) (Land use plans "shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of" FLPMA.).

the extent practical," BLM must "keep itself informed of other Federal agency and state and local land use plans, assure that consideration is given to those plans that are germane to the development of BLM land use plan decisions, and assist in resolving inconsistencies between Federal and non-Federal plans. The key is ongoing, long-term relationships where information is continually shared and updated."[35] The same requirements apply where BLM amends RMPs: "An amendment shall be made through . . . interagency coordination and consistency determination as prescribed in [43 C.F.R.] § 1610.3.[36]

While NEPA does not require maximal consistency between federal and state or local land use plans, it does require that an EIS account for "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned."[37] Thus, "environmental impact statements *shall* discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan or law (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law."[38]

BLM does not evaluate or achieve maximal consistency with State and local plans in the RMPA, violating FLPMA. And the DEIS does not discuss inconsistencies, violating NEPA.

We are particularly concerned by the following notable inconsistencies between the Nevada Sage-grouse Conservation Plan (the State Plan) and the proposed RMPA which could affect exploration and development in the Hog Ranch area:

1. The focus of the Nevada Conservation System's (CCS') Habitat Quantification Tool (HQT) is functional habitat acreage. But BLM's designation in Alternative 3 of all GHMA as PHMA indicates that its habitat designations ignore the importance of functional acreage. BLM must recognize that loss of "functional acreage" rather than impact to an arbitrarily determined habitat designation is the primary issue for mitigation of impacts to GRSG habitat in Nevada.

2. While the CCS permits mitigation via the CCS even in PHMA, Alternative 3 would appear to prohibit surface disturbance, and hence mitigation, in such areas.

3. Alternatives 3, 4, 5, and 6 would extend lek buffer restrictions to all active *and pending* leks. This is inconsistent with the State Plan, which does not contemplate restrictions for pending leks.[39]

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[35] H-1601-1 at 6; *see also* 43 U.S.C. § 1712(c)(9) (FLPMA provides that "to the extent consistent" with federal public land law, BLM must "coordinate [its] land use inventory, planning, and management activities . . . with the land use planning and management programs . . . of the States and local governments within which the lands are located.").

[36] 43 C.F.R. § 1610.5-5. The Department of the Interior's regulations for the Fish and Wildlife Service require it to coordinate with states regarding wildlife on federal public land: "the effective stewardship of fish and wildlife requires the cooperation of the several States and the Federal Government." *Id.* § 24.1(b).

[37] 40 C.F.R. § 1502.16(a)(5).

[38] *Id.* § 1506.2(d) (emphasis added); *see also* CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, at 23b, c (Mar. 16, 1981, and. 1986) (After identifying any potential land use conflicts" between local, state, and federal plans, "the [federal] decisionmaker must weigh the significance of the conflicts.").

[39] *See* State Plan at 10 (defining leks as the "[t]raditional courtship display and mating areas attended by sage-grouse in or adjacent to sagebrush dominated nesting habitat" and omitting mention of pending leks).

4. The DEIS/RMPA includes a disturbance cap; the State Plan does not. BLM should additionally clarify, as it did in the 2015 LUPAs, that the disturbance cap does not apply to locatable minerals.

5. The RMPA uses a "no net loss" and a "net conservation gain" standard. It is not clear how these terms overlap (or if they do), and "no net loss" does not appear to be consistent with the State Plan's definition of net conservation gain.

VI. BLM cannot and should not designate the ACECs it proposes in Alternatives 3 and 6.

BLM's regulations provide that an ACEC cannot be designated unless it meets three criteria:[40]

1. Relevance, or a "significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard";[41]

2. Importance, through which the relevant "value, resource, system, process, or hazard . . . ha[s] substantial significance and values. This generally requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern";[42]

3. A need for special management, meaning a management action to protect and prevent irreparable damage to relevant or important values and a management action that "would not be prescribed in the absence of the [ACEC] designation."[43]

BLM's proposed ACEC designations do not meet any of these three criteria.

A. BLM does not meet the relevance criteria where habitat does not exist.

As we have noted, GRSG habitat does not exist in parts of the Hog Ranch area designated as PHMA. BLM's only justification for any Nevada ACEC satisfying the relevance criterion is "[t]he presence of GRSG."[44] Where GRSG habitat does not exist or where GRSG are not present, BLM does not meet the relevance threshold.[45]

B. The Hayes Canyon ACEC, which partly overlaps with the Hog Ranch Project area, does not meet the importance criterion.

BLM's justification for proposing designation of the Hayes Canyon ACEC, Nevada ACEC 13, does not satisfy the importance criterion. BLM explains that the Hayes Canyon ACEC would include: a "[s]tepping-stone population connecting the northern portion of MZ V (OR & NV)

[40] BLM appears to evaluate just relevance and importance in the DEIS/RMPA. This is inconsistent both with BLM regulations and with, for example, the Public Lands Rule that BLM recently finalized. That Rule states: three criteria must be met for ACEC designation, which are relevance, importance, and special management attention. 89 Fed. Reg. 40308, 40325 (May 9, 2024). BLM must address these three criteria in the DEIS/RMPA.
[41] 43 C.F.R. § 1610.7-2(a)(1).
[42] *Id.* § 1610.7-2(a)(2).
[43] MS-1613.12.
[44] DEIS at 2-117.
[45] As noted above, an agency is generally not authorized to designate habitat where that area is not also habitat for the species." *See Weyerhaeuser*, 586 U.S. at 20.

to the southern portion (CA); about 70% of the area in 25%-50% BBD [breeding bird density]; one NC [nesting colony] that is declining and has tripped an active warning."[46] Additionally, "most of the area is PHMA with about 25% of total area being PHMA+" and is "primarily Growth with some Core sagebrush."[47] The proposed ACEC has "M-H [medium-high] lek persistence; M-L [medium-low] R&R [ecosystem resistance and resilience]" and is "bisected by [a] proposed designated corridor (that includes an existing transmission line)."[48]

1. Breeding bird density and presence of a nesting colony, medium-to-high lek persistence, population growth, and population connectivity (including a "stepping-stone" population) do not indicate importance because these are characteristics of PHMA more broadly than PHMA that is also designated as an ACEC.

2. In the same vein, the fact that the area is PHMA does not indicate importance because the DEIS/RMPA does not automatically designate PHMA as an ACEC (in fact, under Alternative 3, BLM designates all GHMA—which certainly does not meet the importance criterion—as PHMA).

3. Medium-to-low ecosystem resilience and resistance does not prove importance; if anything, it proves the opposite.

4. That the area is a "mostly growth area for sagebrush"—that is, that it has basic qualities of GHMA or PHMA, does not prove importance.

5. The fact that the Hayes Canyon ACEC is bisected by a proposed designated utility corridor indicates that BLM should *not* designate this area as an ACEC. The goal of the RMPA is to prevent *future* habitat fragmentation, not fragmentation that is already proposed and that the ACEC would not appear to prevent.

C. BLM does not explain why its proposed ACECs require special management; instead, the actions contemplated by ACEC designation could be prescribed without ACEC designation.

In the 2015 LUPAs, BLM "decided not to designate PHMA as ACECs in the applicable Records of Decision because it was determined that the management actions for PHMA would be sufficient to protect GRSG habitat and, as such, ACEC designation of PHMA was not required."[49] BLM did not revise this determination in the 2019 RMPAs—indeed, it did not consider ACECs as a management action. Nor did BLM consider ACECs in its 2020 SEIS. BLM does not explain how intervening years have modified its triple determination that no special management was required to protect GRSG habitat. This makes clear that no special management action is required for the proposed ACECs, rendering the designation unlawful.

Additionally, BLM explains that "[i]n general, management actions that protect resources (such as surface-disturbance restrictions and management for desired habitats) would help maintain and improve the relevant and important values within ACECs."[50] It adds that "[i]dentifying ACECs as ROW exclusion or avoidance areas would protect relevant and

[46] DEIS, Vol. III at 5-24.
[47] *Id.*
[48] *Id.*
[49] *Id.* at 5-3.
[50] DEIS at 4-119.

important values by reducing (for avoidance areas) or eliminating (for exclusion areas) impacts from development requiring a ROW permit. Such developments include utilities, access roads, and renewable energy projects."[51] But these management actions do not require ACEC designation: as just one example, independent of ACEC designation, Alternative 3 provides for no surface occupancy of all Wyoming PHMA.[52]

VII. The disturbance cap is unnecessary, cannot legally be applied to locatable minerals, and should not include non-federal land.

As we have noted, the disturbance cap that BLM proposes is inconsistent with the State Plan and should be rejected for this reason alone. Moreover, BLM does not explain why a fixed disturbance cap is necessary to achieve its management goals: adaptive management and the CCS provide better, and already-extant, mechanisms. Further, the 2015 LUPAs stated that "[a]lthough locatable mine sites are included in the degradation calculation, mining activities under the 1872 Mining Law may not be subject to the 3% disturbance cap." BLM has discretionary authority to regulate locatable mineral exploration and development, but this is limited to preventing unnecessary or undue degradation.

Additionally, and worryingly, for Alternatives 3–6, BLM plans to include in its disturbance cap calculation disturbance on non-BLM lands. It states that such analysis is "consistent with the BLM's responsibility to consider cumulative impacts when making decisions for activities on public lands." This misunderstands both RMPAs and the cumulative effects analysis that NEPA requires. BLM's obligation under NEPA to consider impacts on non-federal land does not create any authority for BLM to regulate impacts on non-federal land.

It is inappropriate for BLM to predetermine the scope of the cumulative effects analysis for future projects at the RMPA stage. An RMPA is intended to set the scene for BLM's more site-specific decisions and future NEPA analyses in conjunction with projects proposed in the future. This permits BLM to determine that, for the RMPA, "[t]he cumulative effects analysis area for GRSG is the same as the planning area, which encompasses the entirety of the GRSG current range." Whenever BLM permits a project, however, it must make a site-specific decision as to the area in which cumulative effects analysis is appropriate. Courts have repeatedly held that cumulative effects analysis that does not include "site-specific information" does not constitute the hard look that NEPA requires. The DEIS/RMPA is required to consider cumulative effects as part of its NEPA analysis of the RMPA; it is not meant to prescribe what cumulative effects should be considered as part of BLM's NEPA analysis of other, future federal actions.

BLM should eliminate the disturbance cap, including its consideration of disturbance on non-federal land, from the FEIS/RMPA. BLM also should specify, as it did in the 2015 LUPA, that disturbance caps do not apply to locatable mineral projects.

VIII. The Socioeconomics Analysis for Nevada Omits Key Data on Mining Tax Revenues & Is Grossly Deficient Requiring Supplementation

[51] *Id.*
[52] *Id.* at ES-7.

Section 4.12.4 understates the adverse socioeconomic impacts of Alternatives 1 and 3 to Nevada stemming from the withdrawal of the 2.8-million acre SFA in Elko, Humboldt, and Washoe Counties, Nevada under Alternative 1 or the withdrawal of the 21.1 million acres of PHMA in Nevada under Alternative 3. Table A.29 "State Taxes Assessed on Hard-Rock Mining Activities on Land Types, including Federal Lands (as of 2019)" in Appendix 13 completely omits the Nevada Net Proceeds of Minerals Tax that locatable minerals, geothermal, and oil and gas producers pay in Nevada regardless of the status of the land on which their projects are located.

According to the Nevada Department of Taxation,[53] Nevada mining, geothermal and oil and gas producers paid Net Proceeds of Minerals Taxes of $174,188,236 in Fiscal Year 2021 – 2022 and $65,884,923.89 in Fiscal Year 2022-2023. In these same fiscal years, Nevada gold and silver producers paid $36,921,487 and $68,281,750 respectively in gold and silver excise taxes. These tax revenues need to be added to Table A. 29 and included in the socioeconomic impacts analysis in Section 4.12.4. The loss of these tax revenue streams will significantly exacerbate the adverse socioeconomic impact analysis provided in this section.

IX. Conclusions and Recommendations

Although Rex appreciates this opportunity to provide these comments on BLM's Draft RMPA/EIS, our review finds that this document is fatally flawed due to the inclusion of Alternative 3 as an alternative evaluated in detail because this alternative violates FLPMA and NEPA. BLM needs to prepare a Supplemental Draft RMPA/EIS that eliminates the massive 69.2-million acre withdrawal in Alternative 3 from detailed consideration.

As discussed above, the Draft RMPA/EIS has inappropriately ignored some of our February 2022 scoping comments that have national significance. One of the specific issues we raised in our scoping comments was the need to evaluate how withdrawing lands from mineral entry would likely reduce domestic mineral production and increase the Nation's reliance on foreign minerals from adversarial nations including China. This evaluation is completely absent from the Draft RMPA/EIS.

The soaring demand for battery metals like lithium that are needed to power and build the energy transition is an issue of national prominence and importance. Consequently, BLM must prepare a Supplemental Draft RMPA/EIS to evaluate this critically important and nationally significant issue. The Supplemental Draft RMPA/EIS must carefully weigh the impacts associated with producing domestic critical minerals like lithium on lands that are co-located with GRSG habitat, and balance these potentially competing land uses. This analysis should take into account reclamation and voluntary compensatory mitigation measures to diminish the impacts of mining in GRSG habitat.

We recommend that a Supplemental RMPA/EIS acknowledge that private-sector projects represent a significant opportunity to fund habitat restoration and protection projects through voluntary compensatory mitigation. The severe restrictions and prohibitions to mineral exploration and development and other multiple uses in the Draft RMPA/EIS will delay mineral activities and other responsible uses of public lands by making multiple use activities more costly or thwarting them all together. Such measures will harm GRSG because these

[53] https://tax.nv.gov/uploadedFiles/taxnvgov/Content/TaxLibrary/FY23%20Annual%20Report_FINAL.pdf

restrictions reduce and potentially eliminate sources of future voluntary compensatory mitigation funds.

Finally, we note that the Biden Administration is sending mixed signals regarding development of the Nation's critical mineral resources. The Departments of Energy and Defense have recently awarded substantial grants and loans to companies with critical mineral projects on federal lands – including a $2.26 billion DOE Advanced Technology Vehicles Manufacturing Loan to Lithium Americas,[54] the company developing the Thacker Pass Project. However, at the same time, the Department of the Interior through the BLM is seeking to curtail mining on public lands, including lands with important critical mineral resources, by withdrawing vast areas of the western U.S. from operation of the U.S. Mining Law and prohibiting mineral exploration and development on these lands for at least twenty years.

Responsible development of the Nation's critical mineral resources and reversing the decline in GRSG populations are both important objectives. Given the very modest footprint that mineral exploration and mining have on the landscape, and that reclamation is required on lands impacted by mining activities, mineral development and GRSG are not mutually incompatible. With this in mind, we ask BLM to take a different approach and refocus this NEPA evaluation on how the country can pursue responsible development of important critical mineral deposits while also protecting, restoring, and enhancing GRSG habitats. This alternative approach would fulfill BLM's obligations under FLPMA and NEPA while also providing the country with the minerals we need to reduce our dangerous dependency on foreign minerals and to strengthen domestic mineral supply chains,

Sincerely,

Cherie Leeden
Local Director of Hog Ranch Minerals Inc.
On behalf of Rex Minerals Ltd.
Phone: 530 563 8886

[54] https://lithiumamericas.com/news/news-details/2024/Lithium-Americas-Receives-Conditional-Commitment-for-2.26-Billion-ATVM-Loan-from-the-U.S.-DOE-for-Construction-of-Thacker-Pass/default.aspx

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June 13, 2024

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RE: Comments on BLM's Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning, Federal Register Vol. 89, No. 52

Dear BLM:

I. Introduction

Rex Minerals Ltd. and its U.S. subsidiary, Hog Ranch Minerals Inc. (Rex), are providing these comments in response to the Bureau of Land Management's (BLM's) Notice of Availability published in the Federal Register on March 15, 2024 (Vol. 89, No. 52, pp. 18963 - 18967) seeking public comments on the Draft Greater Sage-Grouse (GRSG) Resource Management Plan Amendment (RMPA) and Draft Environmental Impact Statement (EIS). The Draft RMPA/EIS amends 77 BLM land use plans in 10 western states.

Rex's Hog Ranch Project area lies within the Surprise Resource Management Plan area, which is one of the 77 land use plans included in the Draft RMPA/EIS. This promising gold, silver and lithium[1] exploration and development target is located in northwestern Washoe County, Nevada. The southwestern quadrant of the Hog Ranch property overlaps the Hayes Canyon Area of Critical Environmental Concern (ACEC). The project area was mined for gold from 1985 to 1992. The previous mining activities included mining six pits and mineral processing at a heap leach facility that produced approximately 200,000 ounces of gold. With the recent discovery of lithium at Hog Ranch, this project becomes an important critical minerals project in addition to its potential as a gold project. The project also contains elevated rubidium, another designated critical mineral, which warrants further investigation.

BLM's Northern California District Office/Applegate Field Office recently approved a Plan of Operations that authorizes 200 acres of surface disturbance for exploration drilling to evaluate

[1] The U.S. Geological Survey (USGS) designates lithium as a critical mineral.
See: https://www.energy.gov/sites/default/files/2023-07/preprint-frn-2023-critical-materials-list.pdf

the gold and lithium deposits that Rex has discovered at Hog Ranch. Prior to approving this Plan of Operations, BLM evaluated extensive biological and cultural resources baseline surveys including an on-the-ground GRSG habitat baseline survey. This survey showed that much of the Hog Ranch Project area is not high-value GRSG habitat. Consequently, the maps in the Draft RMPA/EIS that generalize this as a Priority Habitat Management Area (PHMA) are inaccurate and must not be used to guide any project-specific land use management decisions. In order to review and approve the Hog Ranch Exploration Plan of Operations, BLM prepared an Environmental Assessment (EA) and issued a Finding of No Significant Impact (FONSI) in May 2024. During preparation of the EA, BLM worked closely with local stakeholders, including Tribal governments, the Nevada Department of Wildlife and the Nevada Sagebrush Ecosystem Technical Team to assess potential impacts to cultural and biological resources. The BLM also considered public input during a 30-day public comment period for the EA, which did not yield any concerns or objections.

Rex has invested over ten million dollars over the past four years, in exploring for gold and lithium mineralization at Hog Ranch. This work has included geologic mapping and sampling, exploration drilling, metallurgical test work, hyperspectral and soils surveys, numerous geophysical surveys including gravity, magnetics, radiometrics, CSMAT, and three-dimensional IP, and water rights acquisition This significant investment, combined with the historical data (which included 2000 drill holes) has identified a 2.1 million ounce oxide gold resource and 0.15 million ounce sulfide gold resource.

In addition to Rex's gold exploration activities, recent work at Hog Ranch has also discovered a lithium claystone deposit in inter-caldera lake sediments in a geologic setting analogous to the Thacker Pass deposit, which is one of the world's largest known lithium deposits located in the 16-million year old the McDermitt Caldera in nearby Humboldt County, Nevada. Hog Ranch is also located in a 16-million year old caldera, the Cotton Creek Caldera. Lithium assays in drill holes originally drilled for gold have identified significant lithium mineralization including 12.2 meters at 971 parts per million (ppm) lithium in one hole. In response to this lithium discovery, Rex expanded its landholdings by locating over 700 new mining claims in 2023. With these additional claims, Rex currently controls a sizeable circa 35,000-acre land package at Hog Ranch consisting of 1,737 unpatented mining claims.

The exploration work authorized in the Plan of Operations has been designed to expand the existing gold mineral resource and to achieve the following objectives: double the existing gold mineral resource; convert the bulk of the existing mineral resource into the measured and indicated categories; and identify shallow open-pit oxide gold mineralization that will support a heap leach processing facility that can produce over 150,000 ounces of gold production per annum. The exploration project will also advance Rex's understanding of the extent and grade of the lithium claystone deposit and will also investigate the commercial viability of extracting rubidium and/or silver from the known gold resources.

II. BLM has Ignored Rex's February 2022 Scoping Comments

In February 2022, in response to BLM's November 22, 2021, Notice of Intent to prepare a GRSG EIS and Land Use Plans to amend the 2015 GRSG Land Use Plan Amendments, Rex submitted extensive comments on the issues that this Draft RMPA/EIS should evaluate. After reading the 2024 Draft RMPA/EIS, Rex has concluded that BLM has inappropriately ignored or dismissed several of the issues raised in our February 2022 scoping comments that focused on issues of significant national importance dealing with critical minerals. The following

critical minerals issues discussed in our February 2022 comments need to be evaluated in this Draft RMPA/EIS:

- The EIS Must Include Mineral Potential Data in the Planning Area.

- The EIS Must Consider How Reduced Mineral Production and Mineral Withdrawals Would Increase the Nation's Reliance on Foreign Minerals and Impede the Energy Transition. Although it was grossly deficient in its analysis of impacts to geology and minerals, the BLM at least acknowledged in its 2015 LUPAs that it was required to analyze the impact of a proposed withdrawal recommendation, as required by the National Environmental Policy Act (NEPA), and it must do so here.

- BLM Must Consolidate the SFA Withdrawal Analysis into the Draft RMPA/EIS. This analysis should not be evaluated in a separate NEPA document as that will result in unlawful and improper segmentation.

The following subsections discuss why these issues need to be evaluated in the Draft RMPA/EIS.

A. The Draft RMPA/EIS Must Include Mineral Potential Data in the Planning Area

Mineral exploration activities in the USA are still responsible for identifying vast new mineral discoveries. Most of the country has not been adequately explored for critical minerals, and this includes Rex's Hog Ranch Project, where while conducting gold exploration, Rex effectively accidentally discovered lithium and rubidium critical mineral mineralization.

As noted in our 2022 scoping comments, the 2015 NV/CA FEIS was deficient because it did not include a discussion of mineral potential throughout the planning area. In its draft EIS for the mineral withdrawal proposed in the 2015 LUPAs, BLM decided to cancel the withdrawal: the data showed sustained socioeconomic impacts from the withdrawal while it concluded that, over 20 years, mining would result in adverse effects to only 9,000 acres of GRSG range.[2]

Unfortunately, the 2024 Draft RMPA/EIS is equally deficient. There is no detailed discussion of the potential for the lands within the planning area to contain minerals, including critical minerals, to supply the U.S. with the minerals needed to support our economy, infrastructure, manufacturing sectors, and national defense, and to support the Nation's energy transition goals. At the very least, the Draft RMPA/EIS should include the information in the U.S. Geological Survey's (USGS') 2016 Mineral Potential Report (MPR), which assessed the mineral potential of the areas classified in the 2015 EIS documents and land use plan amendments (LUPAs) as Sagebrush Focal Areas (SFAs) that BLM recommended for mineral withdrawal.[3]

[2] *See* BLM, Final Supplemental Environmental Impact Statement, Greater Sage-Grouse, at 4-57 (Nov. 2020) (Explaining that the 2016 DEIS addressing mineral withdrawals "quantified the possible adverse effects from locatable mineral exploration and mining on the approximately 10 million acres of SFAs proposed for withdrawal, finding that they would be limited to approximately 9,000 acres rangewide of surface disturbance over 20 years, with approximately 0.58 percent of Greater Sage-Grouse male birds possibly affected per year. The other action alternatives evaluated in the 2016 SFA Draft EIS similarly demonstrated negligible benefit of the proposed withdrawal to Greater Sage-Grouse and its habitat"; concluding that "[c]onservation benefits of a future withdrawal would be minimal.").

[3] Mineral resources of the Sagebrush Focal Areas of Idaho, Montana, Nevada, Oregon, Utah and Wyoming, Scientific Investigations Report 2016-5089, https://pubs.er.usgs.gov/publication/sir20165089

The statement on Page 13-3-14 that "Within GRSG priority habitat management areas (PHMA), Nevada and California combined have about 147,160 existing open claims across 21,167,000 acres of BLM-administered locatable minerals," clearly indicates there is significant potential for conflicts between mineral exploration and development and GRSG habitat preservation given the large area of co-located mining claims and PHMA. This issue deserves much more discussion than a mere disclosure of the footprint of mining claims in lands designated as PHMA.

As noted on Page 13-3-14, "Nevada is one of the top hard-rock mining states." According to the USGS, in 2023, Nevada was the third highest non-fuel mineral producer in the U.S., with a value of $8.88 billion in mineral production.[4] Although Section 4.10.4 of the Draft RMPA/DEIS discloses that many of the alternatives would reduce mineral production, there is no meaningful analysis of the impacts to the 10 states in the planning area and to the Nation as a whole of how this reduced mineral production would require obtaining necessary minerals from other places, including adversarial foreign countries, and increase the Nation's reliance on imported minerals. This is an especially important issue for critical minerals like lithium and rubidium that are essential to the Nation's goals to reduce the use of fossil fuels and transition towards solar, wind, and other forms of renewable energy.

Because much of the Hog Ranch area is mapped incorrectly as PHMA, Rex is especially concerned that the mineral withdrawal proposed in Alternative 3 would categorically prevent exploration and development of the lithium, possible rubidium, and gold resources at Hog Ranch. We also worry that the restrictions associated with ACECs would interfere with exploration and development of the lithium target in the portion of the Hog Ranch property that overlaps the Hayes Canyon ACEC. This is contrary to statute, which provides for pre-discovery access to, use of, and occupancy rights on lands open to location for mineral exploration and development.[5] BLM must disclose and assess the impacts of its restrictions on valid existing rights such as our mining claims in a supplemental EIS that provides the public an opportunity to review and comment on that analysis.

B. The Draft RMPA/EIS Must Disclose How Reduced Mineral Production and the Mineral Withdrawals in Alternatives 1 and 3 Would Increase the Nation's Reliance on Foreign Minerals

BLM needs to prepare a Supplemental Draft RMPA/EIS that evaluates how the six alternatives it considers in the draft RMPA/EIS would reduce U.S. mineral production and increase our reliance on foreign minerals. Such analysis is required by NEPA, which demands that an EIS's environmental consequences analysis address, "[w]here applicable, economic and technical considerations."[6] "[W]hen the agency determines that economic or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss and give appropriate consideration to these effects on the human environment."[7]

[4] https://pubs.usgs.gov/publication/mcs2024, this value includes sand, gravel, and crushed stone.
[5] *See* 30 U.S.C. §22 (generally, "all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase").
[6] 40 C.F.R. § 1502.16(a)(10).
[7] *Id.* § 1502.16(b). We additionally note that NEPA's basic requirement that an agency assess the environmental effects of a proposed action generally means that it must assess the effects on climate change of a proposed action. *See 350 Mont. v. Haaland*, 50 F.4th 1254, 1263 (9th Cir. 2022); *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017). In a supplemental analysis, BLM should assess the climate change impacts of any aspect of the

This is an issue of national importance that needs to be carefully assessed in a Supplemental Draft RMPA/EIS given the skyrocketing demand for critical minerals and materials to support the energy transition. The International Energy Agency (IEA)[8] predicts soaring demand for critical minerals, including lithium and other battery minerals, and shows that lithium carbonate production is currently concentrated in China. The IEA states: "In clean energy transitions, lithium is the mineral facing the fastest demand growth."

Domestic lithium projects like Thacker Pass can help reduce China's dominance over lithium by both mining lithium ore and producing battery-grade lithium products. Future potential development of a lithium project at Hog Ranch could similarly help reduce the Nation's reliance on Chinese lithium and lithium-ion batteries. Given the national significance of this issue, adding it to the Final RMPA/EIS will not be sufficient. The public needs to be able to provide comments on this important issue, which requires BLM to prepare a Supplemental Draft RMPA/EIS.

The Supplemental Draft RMPA/EIS needs to evaluate the tradeoffs between increasing the country's dependence on foreign minerals versus ensuring more lands designated as PHMA are not impacted by mineral exploration and development. As discussed in Section III below, the Federal Land Policy and Management Act (FLPMA) requires BLM to balance these and other priorities. As written, the Draft RMPA/EIS does not balance these interests because it is mainly concerned with protecting GRSG habitat. This singular focus is inconsistent with the resource balancing and multiple use mandates in FLPMA.

BLM needs to rely on the USGS' expertise to update the mineral data considered in this Draft RMPA/EIS. BLM should ask the USGS to update its 2016 MPR and evaluate the mineral potential in the 69.2 million acres considered for mineral withdrawal in Alternative 3. BLM must conduct the necessary research and compilation of mineral potential data now, in conjunction with this Draft RMPA/EIS – it should not be done as an after-the-fact analysis associated with BLM's decision to pursue mineral withdrawals. Otherwise, there is deficient or nonexistent evaluation and disclosure in the RMPA/EIS for a meaningful evaluation of the geological and socioeconomic impacts of proposing a withdrawal in the first place. An updated MPR is imperative at this point because Alternative 1 recommends withdrawing the 10-million acre SFAs and Alternative 3 recommends withdrawing roughly 69.2 million acres of PHMA in the 10 western states in the planning area. In order for BLM and the public to fully evaluate the impacts associated with both Alternatives 1 and 3, the agency and the public need more information about the mineral potential on these lands.

1. *NEPA requires BLM to address the impact of recommended mineral withdrawals.*

The statement on Page 4-106: "Recommending areas for closure to the mining laws for locatable exploration or development does not restrict any activities and therefore, such recommendation does not have any impacts" is both inaccurate and ludicrous given the chilling effect this planning process and the potential for it to result in a substantial mineral withdrawal

alternatives it is considering (especially mineral withdrawals, designation of ACECs, and restriction on surface disturbance in PHMA) that might reduce the possibility of exploration for and development of critical mineral deposits.

[8] https://iea.blob.core.windows.net/assets/ee01701d-1d5c-4ba8-9df6-abeeac9de99a/GlobalCriticalMineralsOutlook2024.pdf

is having on mineral investment in lands with GRSG habitat. Further, in the 2015 and 2019 GRSG land use plan amendments, BLM acknowledged that a recommended mineral withdrawal did have impact. While grossly deficient, the 2015 LUPAs did acknowledge the requirement for and include some analysis of the effects of a mineral withdrawal, including that "[w]ithdrawal of areas from locatable mineral entry would prohibit the filing of new mining claims in those areas and reduce availability of locatable mineral resources."[9] In the 2019 RMPAs, BLM also at least acknowledged effects of mineral withdrawal, including effects on mineral development.[10]

Equally incorrect is the statement on Page 4-106: " . . . if minerals of interest are not known to occur on the lands within the withdrawal, then the withdrawal would not have an effect." This faulty logic completely dismisses the point that minerals cannot be discovered on lands that are withdrawn from mineral entry during the period of the withdrawal. This shortsighted statement fails to acknowledge that withdrawn lands may contain important minerals that are currently unknown but that could be discovered in the future if these lands were not off-limits to mineral exploration and development. Because the country and the world will need many minerals in the future, and may need different minerals than are currently identified, withdrawing lands is likely to jeopardize the country's future ability to satisfy its long-term mineral requirements. For example, the soaring demand for lithium for the lithium-ion batteries used to power electric vehicles and store electricity is a recent phenomenon. In 2015 and even 2019, this demand did not exist.

BLM's decision not to assess impacts of its proposed recommendation of mineral withdrawal violates NEPA, which requires that BLM assess "changes to the human environment from the proposed action or alternatives that are reasonably foreseeable."[11] The withdrawal is a reasonably foreseeable result of BLM's recommendation: as a result of its 2015 LUPAs' withdrawal recommendation, BLM "filed an application requesting the Assistant Secretary of the Interior for Land and Minerals Management to withdraw" nearly 3 million acres in Nevada. The Assistant Secretary approved this application and the effect was that upon publication of the proposed mineral withdrawal in the Federal Register, all of the lands subject to the application were segregated for a two year period—halting any new location of mining claims and creating significant uncertainty and impediments to any new exploration.[12]

Refusing to analyze the effects of a mineral withdrawal recommendation is also contrary to BLM's previous practice: when it recommended the SFA mineral withdrawals in the 2015 LUPAs, BLM addressed withdrawals in its impacts analysis, stating that the proposed "[w]ithdrawal from locatable mineral entry would result in long-term beneficial impacts on

[9] *Id.* at 4-305.
[10] 2020 FSEIS at 4-48–4-49.
[11] 40 C.F.R. 1508.1(g).
[12] Id. at 57,635. The withdrawal was only revoked when the 2019 RMPAs found that it was unnecessary for GRSG habitat conservation. 82 Fed. Reg. 47,248 (Oct. 11, 2017). "BLM determined the proposal to withdraw 10 million acres was unreasonable in light of the data that showed that mining affected less than 0.1 percent of Greater Sage-Grouse-occupied range." BLM, Final Supplemental Environmental Impact Statement, Greater Sage-Grouse, at 4-42 (Nov. 2020). A district court vacated that decision and required BLM to reassess mineral withdrawal. See W. Watersheds Project v. Bernhardt, 519 F. Supp. 3d 763, 789 (D. Idaho 2021).
Now, the Secretary has reopened the mineral withdrawal process that began with the 2015 LUPAs. See 86 Fed. Reg. 44,742 (Aug. 13, 2021). The concurrent withdrawal process is occurring simultaneous with the present RMPA process, Alternative 1 in the DEIS/RMPA would re-adopt the 2015 LUPAs that recommended the current withdrawal process. Oddly, given the clear connections between these two processes, BLM acts as if they are entirely independent actions that have no bearing on each other.

GRSG habitats associated with all seasonal life history requirements," would benefit wild horses and burros (WHB), and could reduce soil and vegetation disturbance.[13] BLM clearly analyzed effects should the mineral withdrawal be approved by the Secretary of the Interior, stating, for example: "If successful, withdrawal of all PHMA and GHMA from mineral entry under Alternative C would benefit riparian areas and wetlands in the planning area. Compared to Alternative A, many more acres of riparian habitats would be protected from disturbance."[14] Finally, and dispositively, in its section describing indicators for impacts on locatable minerals, BLM's first listed impact indicator was "[a]ctions that reduce availability and opportunity for development of a resource (e.g., mineral withdrawal)," and BLM assessed impacts of such actions: "[w]ithdrawal of areas from locatable mineral entry would prohibit the filing of new mining claims in those areas and reduce availability of locatable mineral resources."[15] BLM also addressed the effects of mineral withdrawal in its SEIS re-analyzing the 2019 RMPAs, including addressing effects of the withdrawal on mineral development.[16]

When an agency departs from past practice, it must provide a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored. It must, in short, explain why it has changed its policy."[17] Here, BLM provides no explanation why mineral withdrawal was analyzed as an effect of its mineral withdrawal recommendation in the EIS for the 2015 LUPAs but mineral withdrawal is not analyzed as an effect of its mineral withdrawal recommendation in the 2024 DEIS/RMPA.

Deferring the analysis of withdrawing lands from mineral development to a future, separate minerals withdrawal EIS essentially kicks the can down the road to retrospectively evaluate the impacts to minerals stemming from a decision that has already been made. This separation does not satisfy the forward-looking alternatives analysis mandates in NEPA that require federal agencies to take a hard look at the impacts of the alternatives carried forward for detailed analysis in a NEPA document.[18] As we discuss below, it also violates NEPA by segmenting the minerals withdrawal from the RMPA which requires disclosure and analysis of the foreseeable actions and impacts from a proposed mineral withdrawal.

C. BLM Must Not Separate the SFA Withdrawal Analysis from this NEPA Evaluation

In our February 2022 scoping comments, we strongly urged BLM to consolidate the SFA withdrawal analysis with this land use planning process and development of this Draft RMPA/EIS. In February 2022, we asserted that separating these analyses into two documents makes no sense. This separation is still nonsensical today. In fact, Alternative 1, the 2015 Proposed Action including the recommendation to withdraw the 10-million acre SFAs, and Alternative 3 to withdraw 69.2 million acres of PHMA demand a thorough evaluation of the impacts associated with these massive mineral withdrawals in this Draft RMPA/EIS.

BLM's statement (Page 4-106) that "Proposing and making a withdrawal is not a land use planning process" is an unpersuasive obfuscation that does not eliminate BLM's NEPA

[13] See BLM, Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement, at 4-31, 4-154, 4-97 (June 2015).
[14] *Id.* at 4-119.
[15] *Id.* at 4-305.
[16] 2020 FSEIS at 4-48–4-49.
[17] *CBS Corp. v. FCC*, 785 F.3d 699, 708 (D.C. Cir. 2015) (citation and internal quotation marks omitted).
[18] *See* 40 CFR § 1508.1(g) (an agency must consider effects, that is, "changes to the human environment from the proposed action or alternatives that are reasonably foreseeable").

obligations to thoroughly evaluate the impacts associated with each alternative considered in detail in the Draft RMPA/EIS. In this Draft RMPA/EIS, BLM must provide a detailed analysis of the impacts of withdrawing between 10 million acres of land under Alternative 1 and 69.2 million acres of public lands under Alternative 3 from operation of the Mining Law and putting these huge tracts of land off limits to mineral exploration and mining for at least twenty years. This analysis must include a thorough disclosure of the jobs and local and state tax revenues that will be lost if lands are withdrawn from mining. It must also discuss how these withdrawals would make it harder to find domestic sources of the minerals we need and lead to an increase in the Nation's reliance on foreign minerals.

The recommendation to withdraw the 10-million acre SFA in the 2015 RMPA/Final EIS is not a separate action from this Draft RMPA/EIS because Alternative 1 *is* the 2015 approved RMPAs:

> Alternative 1 includes the applicable elements of the 2015 Approved RMPAs (ARMPA) that are being analyzed for potential amendment. . . . This alternative also includes designation of some areas of PHMA as Sagebrush Focal Areas (SFA) with a recommendation to withdraw them from mineral location and entry under the Mining Law of 1872. . . . (Page ES-3)

BLM's scheme to separate the NEPA analysis of the 2015 SFA withdrawals from this 2024 NEPA analysis improperly splits the evaluation of the same proposed action into two different documents, which does not fulfill BLM's NEPA obligations. Similarly, the proposed withdrawal of 69.2 million acres under Alternative 3 requires a thorough analysis in this NEPA document—not in some future NEPA document prepared to implement Alternative 3 if that ends up being BLM's Preferred Alternative in the Final RMPA/EIS.[19]

"An agency impermissibly 'segments' NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and action thereby fails to address the true scope and impact of activities that should be under consideration."[20] Here, BLM has improperly segmented review of the DEIS/RMPA by suggesting that the withdrawal is a future possibility that may not occur. But this analysis is not entirely factual: the withdrawal is not a "future possibility" but a current reality: the Secretary is considering a mineral withdrawal recommended by the 2015 LUPAs—that is by Alternative 1.

FLPMA acknowledges that there may be a connection between the Secretary's withdrawals under FLPMA Section 204 and LUPAs developed under FLPMA Section 202. Section 202(e)(3) states that "[w]ithdrawals made pursuant to section 204 of this Act may be used in carrying out management decisions." That appears to be the case here: the withdrawal is a result of the management decision in the 2015 LUPAs. Therefore, BLM should not pretend that these processes are separate: the mineral withdrawal appears to be a connected action with

[19] Our concerns that BLM's Preferred Alternative in the future Final RMPA/EIS could be significantly different than the Preferred Alternative (Alternative 5) in this Draft RMPA/EIS are based on historic precedent. BLM's Preferred Alternative in the 2015 RMPAs added the SFAs, which was significantly different from the agency's preferred Alternative (or any of the other alternatives evaluated) in the 2014 Draft RMPA/EIS. This radical change led the U.S. District Court for the District of Nevada to rule that BLM violated NEPA by failing to prepare a supplemental EIS to evaluate the addition of the SFA to the 2015 Nevada and Northeastern California GRSG RMPA. *See W. Expl., LLC v. DOI*, 250 F. Supp. 3d 718 (D. Nev. 2017).

[20] *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).

the 2015 LUPAs and, hence, Alternative 1. In its analysis of Alternative 1, BLM must assess the effects of the mineral withdrawal that Alternative 1 inaugurates.

III. Alternative 3 Violates FLPMA's Multiple Use Mandate and the NEPA Definition of a Reasonable Alternative

The Draft RMPA/EIS acknowledges that the multiple use and sustained yield mandates in FLPMA are among the planning criteria that underpin this NEPA analysis. However, it appears that avoiding a determination by the U.S. Fish and Wildlife Service (USFWS) to determine that the GRSG should be listed as a threatened or endangered species under the Endangered Species Act is the real driver for this document. We are concerned with this approach for several reasons.

First, by elevating concerns that GRSG could become a federally listed threatened or endangered species, BLM has failed to achieve the appropriate resource balance that FLPMA demands including the explicit directive in Section 102(a)12, which requires "that the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands." Rex shares BLM's goal to keep the GRSG off of the list of federally threatened and endangered species; but moving forward by radically restricting and even prohibiting mining, livestock grazing and other Section 102(a) multiple uses violates FLPMA.

The severe restrictions and prohibitions under Alternative 3 underscore the extent to which BLM is considering subordinating its FLPMA multiple use obligations and taking draconian actions designed to persuade the USFWS from putting GRSG on the list of federally threatened and endangered species. Alternative 3 would categorically prohibit most multiple use activities on the 69.2 million acres that Alternative 3 designates as PHMA throughout the 10-state planning area.[21] Under Alternative 3, 69.2 million acres would be closed to: new leasing for fluid minerals, saleable minerals, mineral materials and nonenergy leasable minerals; development of renewable energy projects; location and entry under the U.S. Mining Law; livestock grazing; and rights of-way (ROWs) designations. This alternative includes 11,139,372 acres of ACECs specifically for GRSG management.

Although we recognize that an alternative that closes a particular area "to development does not necessarily violate the principle of multiple use," FLPMA requires that BLM strike a "delicate balance" between closing some areas to use and leaving others open to development.[22] Alternative 3 emphatically does not strike that balance. Instead, it puts a significant portion of the western United States off limits to development, including—pending the proposed mineral withdrawal—locatable mineral development. Because Alternative 3 violates FLPMA, it cannot be considered as a viable alternative pursuant to NEPA and should not be included in the Draft RMPA/EIS.

Second, Alternative 3 violates the Council on Environmental Quality's (CEQ's) regulations at 40 CFR 1500 *et seq.* that govern preparation of NEPA documents, including this Draft

[21] We note that BLM offers no justification based on reliable information and best available science for its proposal, in Alternative 3, to designate all GHMA as PHMA. This collapse of the distinction between GHMA and PHMA which BLM accepts in all other alternatives and which is based on best available science is contrary to statute and BLM policy.

[22] *N.M. ex rel. Richardson v. BLM*, 565 F.3d 683, 710 (10th Cir. 2009).

RMPA/EIS. The CEQ regulations require federal agencies to evaluate "reasonable alternatives." (40 CFR § 1502.14). 40 CFR § 1508.1 defines a reasonable alternative as "a range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action."

We recognize that it is possible that BLM's final decision on the draft EIS/RMPA will be governed by CEQ's 2024 NEPA implementing regulations.[23] The new NEPA regulations that will become effective on July 1, 2024, still require federal agencies to identify and assess *reasonable* alternatives (40 CFR 15002(e)) and do not change the definition of "reasonable alternatives." In the 2024 NEPA regulations, 40 CFR 1508.1(hh) defines a "reasonable alternative" to mean: "A reasonable range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action."

The severe economic impacts of Alternative 3 are described in Section 4.12 of the Draft RMPA/EIS. Section 4.12.4 includes a detailed discussion of the devasting socioeconomic impacts associated with Alternative 3. For illustrative purposes, the following is a partial list of these impacts:

- Oil and Gas:
  On annual average, oil and gas production revenue and well development expenditures in the analysis area for 8 states combined is expected to result in about 25,000 to 36,000 fewer total jobs (about 11,000 to 14,000 fewer direct jobs), about $2.0 million to $2.9 billion less in total labor income (about $1.2 million to $1.6 billion less in direct labor income), and about $9.2 billion to $12.8 billion less in economic output (about $6.5 billion to $8.5 billion less in direct economic output) than under Alternative 1.

  Management actions that restrict oil and gas development in PHMA would likely adversely affect fiscal revenues and could contribute to future state and local government budget shortfalls, especially in jurisdictions that rely on the taxation of minerals in place of income taxes or where taxes on mineral production currently represent the single largest source of revenue. These budget shortfalls may affect the ability of states and local governments to maintain infrastructure and provide public services at current levels. Insufficient funding for infrastructure and public services would adversely affect quality of life in affected communities and could further limit rural residents' access to educational opportunities, health care, and social safety net programs.

- Locatable minerals:
  The reduction in economic activity could result in impacts on market and nonmarket conditions, such as reductions in jobs, labor income, economic output, tax revenue, public services, access to lifestyles and culture associated with mining. Additionally, for those mining operators with existing mining claims that might survive a withdrawal, costs could increase due to the additional requirement to verify mining claim validity before BLM will approve a notice or plan of operations. These impacts could put a lot of strain on communities, especially those that are dependent on the mining industry.

[23] *See NRDC v. U.S. Forest Serv.*, 421 F.3d 797, 800 n.3 (9th Cir. 2005) ("The regulations . . . have since been supplanted. However, the former regulations are applicable here because they were in effect when" the relevant decision was made.).

- Livestock Grazing:
  On annual average, livestock grazing on allotments where PHMA accounted for at least 15 percent of the acreage in the analysis areas for all 10 states combined is expected to result in about 2,000 fewer total jobs (about 841 fewer direct jobs), $120 million less in total labor income (about $67.6 million less in direct labor income), and about $380 million less in economic output (about $204 million less in direct economic output), compared with Alternative 1. The restrictions on livestock grazing in large portions of federal allotments could impact the economic resilience of ranching and farming communities.

  Making PHMA unavailable to livestock grazing could result in increases in costs to ranchers and farmers who would have to find alternatives for federal forage for their livestock. The cost increases may lead to increases in meat prices if passed on to consumers and, in the long term, decreases in availability of meat and animal products. Increases in prices and decreases in availability of meat and animal products could put additional strain on households, especially those with lower incomes in rural areas, where food prices tend to be higher and a larger percentage of their disposable income goes towards food purchases...There could be higher potential for closures of ranches or ranches selling lands to create ranchettes, which could have substantial impacts on social and economic conditions in some surrounding communities. These impacts include impacts on communities' well-being and social cohesion and impacts on access and quality of the ranching lifestyle, culture, and sense of place for those who rely on access to forage from federal land for their farming and ranching operations as well as for those who are part of the farming and ranching communities of interest and value livestock grazing on public lands.

These excepts vividly illustrate the extremely adverse socioeconomic impacts associated with Alternative 3 and clearly demonstrate it is not an "economically feasible" alternative as defined in any version of the CEQ's NEPA regulations. Inclusion of Alternative 3 in the Draft RMPA/DEIS is a fatal flaw that must be remedied by preparation of a Supplemental Draft RMPA/DEIS that eliminates Alternative 3 from detailed consideration on the grounds that it is economically infeasible and that it is also inconsistent with FLPMA's multiple use mandates. BLM must comply with both the NEPA regulations and FLPMA. BLM is not authorized to jettison its multiple use management obligations and manage public lands with severe multiple use prohibitions and restrictions in order to minimize the likelihood that the USFWS will put the GRSG on the list of federally threatened and endangered species. BLM can only consider reasonable alternatives as defined by NEPA while authorizing a balance of multiple uses that fulfill BLM's FLPMA obligations.

IV. BLM must accurately designate HMAs in the Hog Ranch area.

As we have noted, BLM has evaluated a GRSG habitat baseline survey for the Hog Ranch Project area which showed that much of the Project area is not high-value GRSG habitat: it was either potential habitat or non-habitat. For example, "[v]egetation in the Bells Survey Area consists largely of sagebrush communities that offer potential habitat to GRSG" but BLM did

not note any GRSG occupation there.[24] And "[t]he Grass Valley lek had no GRSG observed in 2020 or 2021."[25]

BLM's designation of most of the Hog Ranch Project area as PHMA thus is not based on best available science. This contravenes NEPA and BLM policy. Under NEPA, BLM must "ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents" and "make use of reliable existing data and resources."[26] Additionally, in Nevada, BLM treats GRSG as a sensitive species,[27] and "[w]hen administering the [BLM] sensitive species program, all information shall conform to the standards and guidelines established under the Information Quality Act."[28] BLM's Information Quality Guidelines provide that "BLM operates on the principle of collecting or acquiring timely information that it judges to be the best available consistent with its mission requirements."[29]

We note that BLM appears to consider potential habitat or non-habitat as PHMA.[30] But BLM's own Glossary of Common Terms states that habitat is "[a]n environment that *meets* a specific set of physical, biological, temporal, or spatial characteristics that satisfy the requirements of a plant or animal species or group of species for part or all of their life cycle."[31] BLM must provide a "reasoned analysis" justifying its departure from this definition of habitat.[32] Further, BLM cannot manage an area for habitat where that area is not habitat. The Supreme Court recently rejected the US Fish and Wildlife Service's (USFWS's) decision to manage habitat for the dusky gopher frog where the area could not presently constitute habitat for the species. The Court held, regarding designation of critical habitat under the Endangered Species Act, that the Secretary of the Interior is not authorized "to designate the area as critical habitat unless it is also habitat for the species."[33]

BLM must specify that any designation of HMA based on its modelling is always subject to ground truthing and the agency must and will consider site-specific information in its decision making at a project level.

V. Except for Alternative 2, the alternatives proposed in the DEIS/RMPA are not consistent with the Nevada Sage-grouse Conservation Plan and violate FLPMA and NEPA.

FLPMA requires that land use plans "be consistent with other Federal agency, state, and local plans to the maximum extent consistent with Federal law and FLPMA provisions."[34] Thus, "to

[24] BLM, Hog Ranch Exploration Project Environmental Assessment, at 3-26 (Sept. 2023).
[25] *Id.*
[26] 40 C.F.R. § 1502.23.
[27] BLM, Nevada Special Status Species List, at 2 (Sept. 2023) https://www.blm.gov/sites/default/files/docs/2023-11/NV-IM-2024-003%20att%201%20BLM%20Nevada%20Special%20Status%20Species%20List_0.pdf
[28] BLM, Manual M-6840.2.
[29] BLM, Information Quality Guidelines, at 9 (Apr. 2, 2018).
[30] *See* DEIS at Glossary-6 (defining PHMA as "[a]reas prioritized for managing Greater Sage-Grouse populations . . . [t]hese management areas include high-quality habitat and may also include areas with poor or potential habitat, and nonhabitat").
[31] "Habitat" in BLM, Glossary of Common BLM Terms, https://eplanning.blm.gov/public_projects/lup/22652/34861/36285/1.2_Glossary_of_Common_BLM_Terms.pdf (emphasis added).
[32] *CBS Corp. v. FCC*, 785 F.3d 699, 708 (D.C. Cir. 2015).
[33] *Weyerhaeuser Co. v. United States Fish & Wildlife Serv.*, 586 U.S. 9, 20 (2018).
[34] BLM, H-1601-1, at 6; *see also* 43 U.S.C. § 1712(c)(9) (Land use plans "shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of" FLPMA.).

the extent practical," BLM must "keep itself informed of other Federal agency and state and local land use plans, assure that consideration is given to those plans that are germane to the development of BLM land use plan decisions, and assist in resolving inconsistencies between Federal and non-Federal plans. The key is ongoing, long-term relationships where information is continually shared and updated."[35] The same requirements apply where BLM amends RMPs: "An amendment shall be made through . . . interagency coordination and consistency determination as prescribed in [43 C.F.R.] § 1610.3.[36]

While NEPA does not require maximal consistency between federal and state or local land use plans, it does require that an EIS account for "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned."[37] Thus, "environmental impact statements *shall* discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan or law (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law."[38]

BLM does not evaluate or achieve maximal consistency with State and local plans in the RMPA, violating FLPMA. And the DEIS does not discuss inconsistencies, violating NEPA.

We are particularly concerned by the following notable inconsistencies between the Nevada Sage-grouse Conservation Plan (the State Plan) and the proposed RMPA which could affect exploration and development in the Hog Ranch area:

1. The focus of the Nevada Conservation System's (CCS') Habitat Quantification Tool (HQT) is functional habitat acreage. But BLM's designation in Alternative 3 of all GHMA as PHMA indicates that its habitat designations ignore the importance of functional acreage. BLM must recognize that loss of "functional acreage" rather than impact to an arbitrarily determined habitat designation is the primary issue for mitigation of impacts to GRSG habitat in Nevada.

2. While the CCS permits mitigation via the CCS even in PHMA, Alternative 3 would appear to prohibit surface disturbance, and hence mitigation, in such areas.

3. Alternatives 3, 4, 5, and 6 would extend lek buffer restrictions to all active *and pending* leks. This is inconsistent with the State Plan, which does not contemplate restrictions for pending leks.[39]

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[35] H-1601-1 at 6; *see also* 43 U.S.C. § 1712(c)(9) (FLPMA provides that "to the extent consistent" with federal public land law, BLM must "coordinate [its] land use inventory, planning, and management activities . . . with the land use planning and management programs . . . of the States and local governments within which the lands are located.").

[36] 43 C.F.R. § 1610.5-5. The Department of the Interior's regulations for the Fish and Wildlife Service require it to coordinate with states regarding wildlife on federal public land: "the effective stewardship of fish and wildlife requires the cooperation of the several States and the Federal Government." *Id.* § 24.1(b).

[37] 40 C.F.R. § 1502.16(a)(5).

[38] *Id.* § 1506.2(d) (emphasis added); *see also* CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, at 23b, c (Mar. 16, 1981, and. 1986) (After identifying any potential land use conflicts" between local, state, and federal plans, "the [federal] decisionmaker must weigh the significance of the conflicts.").

[39] *See* State Plan at 10 (defining leks as the "[t]raditional courtship display and mating areas attended by sage-grouse in or adjacent to sagebrush dominated nesting habitat" and omitting mention of pending leks).

4. The DEIS/RMPA includes a disturbance cap; the State Plan does not. BLM should additionally clarify, as it did in the 2015 LUPAs, that the disturbance cap does not apply to locatable minerals.

5. The RMPA uses a "no net loss" and a "net conservation gain" standard. It is not clear how these terms overlap (or if they do), and "no net loss" does not appear to be consistent with the State Plan's definition of net conservation gain.

VI. BLM cannot and should not designate the ACECs it proposes in Alternatives 3 and 6.

BLM's regulations provide that an ACEC cannot be designated unless it meets three criteria:[40]

1. Relevance, or a "significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard";[41]

2. Importance, through which the relevant "value, resource, system, process, or hazard . . . ha[s] substantial significance and values. This generally requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern";[42]

3. A need for special management, meaning a management action to protect and prevent irreparable damage to relevant or important values and a management action that "would not be prescribed in the absence of the [ACEC] designation."[43]

BLM's proposed ACEC designations do not meet any of these three criteria.

A. BLM does not meet the relevance criteria where habitat does not exist.

As we have noted, GRSG habitat does not exist in parts of the Hog Ranch area designated as PHMA. BLM's only justification for any Nevada ACEC satisfying the relevance criterion is "[t]he presence of GRSG."[44] Where GRSG habitat does not exist or where GRSG are not present, BLM does not meet the relevance threshold.[45]

B. The Hayes Canyon ACEC, which partly overlaps with the Hog Ranch Project area, does not meet the importance criterion.

BLM's justification for proposing designation of the Hayes Canyon ACEC, Nevada ACEC 13, does not satisfy the importance criterion. BLM explains that the Hayes Canyon ACEC would include: a "[s]tepping-stone population connecting the northern portion of MZ V (OR & NV)

[40] BLM appears to evaluate just relevance and importance in the DEIS/RMPA. This is inconsistent both with BLM regulations and with, for example, the Public Lands Rule that BLM recently finalized. That Rule states: three criteria must be met for ACEC designation, which are relevance, importance, and special management attention. 89 Fed. Reg. 40308, 40325 (May 9, 2024). BLM must address these three criteria in the DEIS/RMPA.
[41] 43 C.F.R. § 1610.7-2(a)(1).
[42] *Id.* § 1610.7-2(a)(2).
[43] MS-1613.12.
[44] DEIS at 2-117.
[45] As noted above, an agency is generally not authorized to designate habitat where that area is not also habitat for the species." *See Weyerhaeuser*, 586 U.S. at 20.

to the southern portion (CA); about 70% of the area in 25%-50% BBD [breeding bird density]; one NC [nesting colony] that is declining and has tripped an active warning."[46] Additionally, "most of the area is PHMA with about 25% of total area being PHMA+" and is "primarily Growth with some Core sagebrush."[47] The proposed ACEC has "M-H [medium-high] lek persistence; M-L [medium-low] R&R [ecosystem resistance and resilience]" and is "bisected by [a] proposed designated corridor (that includes an existing transmission line)."[48]

1. Breeding bird density and presence of a nesting colony, medium-to-high lek persistence, population growth, and population connectivity (including a "stepping-stone" population) do not indicate importance because these are characteristics of PHMA more broadly than PHMA that is also designated as an ACEC.

2. In the same vein, the fact that the area is PHMA does not indicate importance because the DEIS/RMPA does not automatically designate PHMA as an ACEC (in fact, under Alternative 3, BLM designates all GHMA—which certainly does not meet the importance criterion—as PHMA).

3. Medium-to-low ecosystem resilience and resistance does not prove importance; if anything, it proves the opposite.

4. That the area is a "mostly growth area for sagebrush"—that is, that it has basic qualities of GHMA or PHMA, does not prove importance.

5. The fact that the Hayes Canyon ACEC is bisected by a proposed designated utility corridor indicates that BLM should *not* designate this area as an ACEC. The goal of the RMPA is to prevent *future* habitat fragmentation, not fragmentation that is already proposed and that the ACEC would not appear to prevent.

C. BLM does not explain why its proposed ACECs require special management; instead, the actions contemplated by ACEC designation could be prescribed without ACEC designation.

In the 2015 LUPAs, BLM "decided not to designate PHMA as ACECs in the applicable Records of Decision because it was determined that the management actions for PHMA would be sufficient to protect GRSG habitat and, as such, ACEC designation of PHMA was not required."[49] BLM did not revise this determination in the 2019 RMPAs—indeed, it did not consider ACECs as a management action. Nor did BLM consider ACECs in its 2020 SEIS. BLM does not explain how intervening years have modified its triple determination that no special management was required to protect GRSG habitat. This makes clear that no special management action is required for the proposed ACECs, rendering the designation unlawful.

Additionally, BLM explains that "[i]n general, management actions that protect resources (such as surface-disturbance restrictions and management for desired habitats) would help maintain and improve the relevant and important values within ACECs."[50] It adds that "[i]dentifying ACECs as ROW exclusion or avoidance areas would protect relevant and

[46] DEIS, Vol. III at 5-24.
[47] *Id.*
[48] *Id.*
[49] *Id.* at 5-3.
[50] DEIS at 4-119.

important values by reducing (for avoidance areas) or eliminating (for exclusion areas) impacts from development requiring a ROW permit. Such developments include utilities, access roads, and renewable energy projects."[51] But these management actions do not require ACEC designation: as just one example, independent of ACEC designation, Alternative 3 provides for no surface occupancy of all Wyoming PHMA.[52]

VII. The disturbance cap is unnecessary, cannot legally be applied to locatable minerals, and should not include non-federal land.

As we have noted, the disturbance cap that BLM proposes is inconsistent with the State Plan and should be rejected for this reason alone. Moreover, BLM does not explain why a fixed disturbance cap is necessary to achieve its management goals: adaptive management and the CCS provide better, and already-extant, mechanisms. Further, the 2015 LUPAs stated that "[a]lthough locatable mine sites are included in the degradation calculation, mining activities under the 1872 Mining Law may not be subject to the 3% disturbance cap." BLM has discretionary authority to regulate locatable mineral exploration and development, but this is limited to preventing unnecessary or undue degradation.

Additionally, and worryingly, for Alternatives 3–6, BLM plans to include in its disturbance cap calculation disturbance on non-BLM lands. It states that such analysis is "consistent with the BLM's responsibility to consider cumulative impacts when making decisions for activities on public lands." This misunderstands both RMPAs and the cumulative effects analysis that NEPA requires. BLM's obligation under NEPA to consider impacts on non-federal land does not create any authority for BLM to regulate impacts on non-federal land.

It is inappropriate for BLM to predetermine the scope of the cumulative effects analysis for future projects at the RMPA stage. An RMPA is intended to set the scene for BLM's more site-specific decisions and future NEPA analyses in conjunction with projects proposed in the future. This permits BLM to determine that, for the RMPA, "[t]he cumulative effects analysis area for GRSG is the same as the planning area, which encompasses the entirety of the GRSG current range." Whenever BLM permits a project, however, it must make a site-specific decision as to the area in which cumulative effects analysis is appropriate. Courts have repeatedly held that cumulative effects analysis that does not include "site-specific information" does not constitute the hard look that NEPA requires. The DEIS/RMPA is required to consider cumulative effects as part of its NEPA analysis of the RMPA; it is not meant to prescribe what cumulative effects should be considered as part of BLM's NEPA analysis of other, future federal actions.

BLM should eliminate the disturbance cap, including its consideration of disturbance on non-federal land, from the FEIS/RMPA. BLM also should specify, as it did in the 2015 LUPA, that disturbance caps do not apply to locatable mineral projects.

VIII. The Socioeconomics Analysis for Nevada Omits Key Data on Mining Tax Revenues & Is Grossly Deficient Requiring Supplementation

[51] *Id.*
[52] *Id.* at ES-7.

Section 4.12.4 understates the adverse socioeconomic impacts of Alternatives 1 and 3 to Nevada stemming from the withdrawal of the 2.8-million acre SFA in Elko, Humboldt, and Washoe Counties, Nevada under Alternative 1 or the withdrawal of the 21.1 million acres of PHMA in Nevada under Alternative 3. Table A.29 "State Taxes Assessed on Hard-Rock Mining Activities on Land Types, including Federal Lands (as of 2019)" in Appendix 13 completely omits the Nevada Net Proceeds of Minerals Tax that locatable minerals, geothermal, and oil and gas producers pay in Nevada regardless of the status of the land on which their projects are located.

According to the Nevada Department of Taxation,[53] Nevada mining, geothermal and oil and gas producers paid Net Proceeds of Minerals Taxes of $174,188,236 in Fiscal Year 2021 – 2022 and $65,884,923.89 in Fiscal Year 2022-2023. In these same fiscal years, Nevada gold and silver producers paid $36,921,487 and $68,281,750 respectively in gold and silver excise taxes. These tax revenues need to be added to Table A. 29 and included in the socioeconomic impacts analysis in Section 4.12.4. The loss of these tax revenue streams will significantly exacerbate the adverse socioeconomic impact analysis provided in this section.

IX. Conclusions and Recommendations

Although Rex appreciates this opportunity to provide these comments on BLM's Draft RMPA/EIS, our review finds that this document is fatally flawed due to the inclusion of Alternative 3 as an alternative evaluated in detail because this alternative violates FLPMA and NEPA. BLM needs to prepare a Supplemental Draft RMPA/EIS that eliminates the massive 69.2-million acre withdrawal in Alternative 3 from detailed consideration.

As discussed above, the Draft RMPA/EIS has inappropriately ignored some of our February 2022 scoping comments that have national significance. One of the specific issues we raised in our scoping comments was the need to evaluate how withdrawing lands from mineral entry would likely reduce domestic mineral production and increase the Nation's reliance on foreign minerals from adversarial nations including China. This evaluation is completely absent from the Draft RMPA/EIS.

The soaring demand for battery metals like lithium that are needed to power and build the energy transition is an issue of national prominence and importance. Consequently, BLM must prepare a Supplemental Draft RMPA/EIS to evaluate this critically important and nationally significant issue. The Supplemental Draft RMPA/EIS must carefully weigh the impacts associated with producing domestic critical minerals like lithium on lands that are co-located with GRSG habitat, and balance these potentially competing land uses. This analysis should take into account reclamation and voluntary compensatory mitigation measures to diminish the impacts of mining in GRSG habitat.

We recommend that a Supplemental RMPA/EIS acknowledge that private-sector projects represent a significant opportunity to fund habitat restoration and protection projects through voluntary compensatory mitigation. The severe restrictions and prohibitions to mineral exploration and development and other multiple uses in the Draft RMPA/EIS will delay mineral activities and other responsible uses of public lands by making multiple use activities more costly or thwarting them all together. Such measures will harm GRSG because these

[53] https://tax.nv.gov/uploadedFiles/taxnvgov/Content/TaxLibrary/FY23%20Annual%20Report_FINAL.pdf

restrictions reduce and potentially eliminate sources of future voluntary compensatory mitigation funds.

Finally, we note that the Biden Administration is sending mixed signals regarding development of the Nation's critical mineral resources. The Departments of Energy and Defense have recently awarded substantial grants and loans to companies with critical mineral projects on federal lands – including a $2.26 billion DOE Advanced Technology Vehicles Manufacturing Loan to Lithium Americas,[54] the company developing the Thacker Pass Project. However, at the same time, the Department of the Interior through the BLM is seeking to curtail mining on public lands, including lands with important critical mineral resources, by withdrawing vast areas of the western U.S. from operation of the U.S. Mining Law and prohibiting mineral exploration and development on these lands for at least twenty years.

Responsible development of the Nation's critical mineral resources and reversing the decline in GRSG populations are both important objectives. Given the very modest footprint that mineral exploration and mining have on the landscape, and that reclamation is required on lands impacted by mining activities, mineral development and GRSG are not mutually incompatible. With this in mind, we ask BLM to take a different approach and refocus this NEPA evaluation on how the country can pursue responsible development of important critical mineral deposits while also protecting, restoring, and enhancing GRSG habitats. This alternative approach would fulfill BLM's obligations under FLPMA and NEPA while also providing the country with the minerals we need to reduce our dangerous dependency on foreign minerals and to strengthen domestic mineral supply chains,

Sincerely,

Cherie Leeden
Local Director of Hog Ranch Minerals Inc.
On behalf of Rex Minerals Ltd.
Phone: 530 563 8886

[54] https://lithiumamericas.com/news/news-details/2024/Lithium-Americas-Receives-Conditional-Commitment-for-2.26-Billion-ATVM-Loan-from-the-U.S.-DOE-for-Construction-of-Thacker-Pass/default.aspx

TREE TOP RANCHES

June 10, 2024

USDI-BLM
Utah State Office
Attn: HQ GRSG RMPA
440 West 200 South, #500
Salt Lake City, UT 84101

Re: Stakeholder Comments
Greater Sage-grouse Land Use Plan Amendments an EIS
March 15, 2024

To whom it may concern:

These comments pertain primarily to (2) Alternatives, Section 2.5.10 Livestock Grazing of the above-mentioned Amendments and EIS.

Tree Top Ranches, LP ("TTR") is a cattle ranching operation with ranches in Idaho, Oregon and Nevada. TTR holds more than 20 BLM Grazing Permits across those States.

With regard to the proposed Greater Sage-grouse Land Use Plan Amendments and EIS, we submit the following comments.

1. General.
   a. There are many thousands of grazing permittees within the area affected by this Greater Sage-grouse ("GRSG") Land Use Plan amendment ("LUPA"). Like TTR, these permittees are very familiar with their allotments and are actually out on or adjacent to these allotments on a daily basis year around. We observe GRSG and their habitats and activities constantly. Yet, inexplicably, BLM has not even once contacted us for relevant input about the bird or the potential effects of LUPAs.
   If BLM were truly interested in effecting meaningful provisions to its LUPAs beneficial to GRSG, it would and should engage in actual, meaningful collaboration with these permittees and incorporate the results within any LUPA.
   b. There are many thousands of ranches with significant private lands within the area affected by this Greater Sage-grouse ("GRSG") Land Use Plan. Like TTR, these landowners are actually out on these lands on a daily basis year around. We observe GRSG and their habitats and activities constantly. Again, BLM has not even once contacted us for relevant input.
   If BLM were really interested in effecting meaningful provisions to its LUPAs beneficial to GRSG, it would and should engage in actual, meaningful collaboration with these landowners and incorporate the results within any LUP amendment.
   c. ARMPA and this LUP amendment rely on so-called "scientific studies" that are spatially and temporally inadequate.
      i. They effectively ignore the extent and effects of predation.

ii. They fail to recognize that most public lands have remained substantially unchanged for numerous decades and potential threats to GRSG have not changed, yet GRSG numbers continue to decline.

If BLM is sincerely interested in making significant progress toward realistic GRSG viability it needs to conduct more holistic habitat potential evaluations with overarching consideration given to these factors. Unless and until that occurs BLM is likely to experience continued declines.

d. If BLM's objective is to stabilize GRSG populations without further significant decline it and USDI should immediately cease making further Wilderness designations. Measures necessary to secure GRSG persistence may require activities precluded by Wilderness designation.
e. If BLM's objective is to stabilize GRSG populations without further significant decline it and Congress should immediately act to eliminate WSAs. Measures necessary to secure GRSG persistence may require activities precluded by WSA restrictions.

2. Specific.
   a. 2.5.10 refers "Well-managed public lands grazing...". The seasons of use, permitted numbers, etc. resulting from BLM's permit issuance may provide quantifiable standards but they do not assure "well-managed grazing". In many instances these standards are contrary to well managed grazing. If BLM is genuinely interested in well managed grazing it should make meaningful efforts to consult and collaborate with the stakeholders who actually know something about managing grazing—permittees and ranchers.
   b. BLM should not rely substantially on Land Health Standards ("LHS") evaluations in permit renewals. RHA/LHA determinations are subject to numerous factors that lead to inaccurate representations of the pasture/allotment condition, e.g. site location, variations in precipitation, detrimental permit terms and conditions, unauthorized uses not under the control of the permittee, etc., etc.. Instead, BLM should work with the permittee(s) to evaluate and resolve these variables and to devise functional grazing systems compatible with TGA, FLPMA, rangeland health, grazing use and GRSG persistence.
   c. The ACECs in Oregon should not be made unavailable to grazing until after a separate and thorough review. In at least one instance, the Dry Creek Butte ACEC, the ACEC was originally designated as a unique Mountain Mahogany area. The trees are unaffected by grazing, yet for unspecified reasons it was made unavailable to grazing under the terms of 2015 ARMPA. ARMPA fails to provide substantiated rationale as to why these areas should be made unavailable. Further, it fails to evaluate the effect on permitted grazing and whether or not the grazing closure might actually harm the closure habitat.

   No Alternatives should be adopted until each of these items have been properly resolved.

3. In short, ARMPA and this LUPA try to effect GRSG persistence by regulating away perceived threats to GRSG habitat.
   a. This LUPA fails to recognize that its reliance on faulty overly broad-scale regulations and temporally/spatially-inadequate "science" may work synergistically with other deficient management objectives and actions to produce large-scale adverse impacts to GRSG habitats, populations and persistence, as discussed above.
   b. If BLM desires to achieve real GRSG persistence it should consider a total re-write of ARMPA to 1) identify realistic GRSG population expectations; 2) properly balance

multiple use objectives; and 3) work in true collaboration with permittees, private landowners and other stakeholders.

Thank you for the opportunity to submit these comments.

Respectfully,

TREE TOP RANCHES, LP

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Please accept this public comment, from Oregon Wild Horse Organization and all other organizations and individuals who have added their names at the end of this comment, regarding DOI-BLM-WO-2300-2022-0001-RMP-EIS.

Oregon Wild Horse Organization (OWHO) is a national nonprofit with science writers who assist us in reviewing many studies regarding public lands and wild horses. We support the management of wild horses that results in on range management, with genetically viable herds on healthy lands. We advocate for management decisions that fully follow the very plain language of the Wild Free-Roaming Horses and Burros Act (WHBA) of 1971.

We are concerned about the level of unsupported claims about wild horse impacts on sage grouse population numbers. The studies used do not provide qualitative or quantitative proof that horses specifically cause any decline or habitat loss. We discuss several of those studies herein.

We also address some statements made in the EIS that are incorrect or outdated. And we will refute some interpretations of regulations that we feel make a difference in the final decision of this EIS.

First we'll address the laws. Please note that we are not addressing burros specifically because in reading this EIS they do not seem to be at risk of major management changes. The WHBA specifically stated that the areas where wild horses were in 1971 were to be managed "principally" for wild horses. BLM then relabeled areas and gave them names like HA, HMA, Range or Complex. Nowhere in any regulation does the law now state that IF an area has the label HA or HMA or Complex, that mandate to manage the area principally for wild horses is no longer in effect. There is law that states if BLM calls an area of the range a "Range" with a capital "R" it will be managed principally for the wild equines. However, BLM just decided to then not follow that mandate on all other areas. This is not in keeping with the plain language of the law. (See Attachment 1)

Secondly, this EIS, pg. 3-29 states:

> "*The Wild Free-Roaming Horses and Burros Act of 1971, as amended by FLPMA…*"

This is incorrect, and in fact, FLPMA does not apply to wild horse or burro areas. BLM illegally applies FLPMA/multiple use/lands use plans to these wild horse areas. The WHBA is a land use regulation enacted to protect a specific species[1]. As such it should be considered when making sure the RMP and other documents are in compliance with it, just like they do The Bald and

[1] Mountain States V Hodel - 799 F.2d 1423 (10th Cir. 1986); "*In structure and purpose, the Wild Free-Roaming Horses and Burros Act is nothing more than a land-use regulation enacted by Congress to ensure the survival of a particular species of wildlife.*"

Golden Eagle Protection Act (16 U.S.C. 668-668d) or Greater Sage Grouse plans. Instead, WHB management is built into the RMP as if they are simply one of the multiple uses and not a special status species with a specific law that is a land use plan. FLPMA does not apply to wild horse and burro areas protected under the WHBA. See sections of FLPMA below that make this clear. Also see the statement made in FOIA documents from Senator Harry Reid regarding FLPMA and wild horse/burro areas in Attachment 1.

> 43 USC 1701. SEC. 102. DECLARATION OF POLICY
> *"(b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as* ***supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law****."* (emphasis added)
>
> 43 USC 1732. SEC. 302. MANAGEMENT OF USE, OCCUPANCY AND DEVELOPMENT
> *"(a) The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available,* ***except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law*** *it shall be managed in accordance with such law."* (emphasis added)
>
> 43 USC 1701 SEC. 701. EFFECT ON EXISTING RIGHTS
> *"(a)* ***Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating*** *any valid lease, permit, patent, right-of-way, or* ***other land use right or authorization*** *existing on the date of approval of this Act."* (emphasis added)

Sec. 102 clearly indicates that wild horse management plans would be separate and not subject to local RMPs or a plan for greater sage grouse.

Wild horse and burro management decisions must be in conformance with regulations, but a BLM plan such as this cannot supersede federal laws such as the WHBA. Which is supported by a statement in this EIS: "*Defining the appropriate management level (AML) …are implementation-level actions rather than RMP-level decisions.*" Alternatives presented in this EIS attempt to remove all wild horses from their federal designated lands (Alternative 3) which would override mandates in the 1971 Wild Free-Roaming Horses and Burros Act. All other alternatives make removal of wild horses to within AML, or low end AML (and keeping them at low end AML) in order to prioritize sage grouse over the wild horses.

A wild horse gather can only be done if 2 things exist. 16 U.S. Code § 1333(b)(2): "Where the Secretary determines…that an **overpopulation exists** on a given area of the public lands **and** that **action is necessary** to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels." (emphasis added)

Moreover, the BLM Handbook (4700-1) states:
"*Justifying a removal based on nothing more than the established AML is not acceptable*."

Additionally, the court ruled that AML in and of itself does not prove excess (WY v. US DOI., et al. Case No. 15-8041; 2016 (10th Cir.)). In construing the provisions of the Act, the Tenth Circuit held:

> "*As noted, the Act does not define the phrase "appropriate management level" and thus **does not equate it with any requirement to remove excess animals from a particular HMA**. Nor does the BLM itself define the phrase as equivalent to a determination that removal is necessary. Further, and most importantly, the language of Section 3, as discussed above, **clearly requires both a determination by the BLM that "an overpopulation exists on a given area of the public lands and that action is necessary** to remove excess animals ….*" 16 U.S.C. § 1333(b)(2) (emphasis added)."

The preferred alternative in this EIS would require wild horses to be gathered based on AML alone. Which, as stated above is not legal, and when combined with the other legal issues above a sage grouse plan does not supersede existing law. We also point out that BLM failed to provide an alternative that does not include removal of wild horses. This EIS leans heavily in favor of livestock grazing and presents a clear bias.

This leads us to the issue of AML itself. The issue of BLM establishment of AMLs has always been contentious and has been called into question by the NAS[2] who made it clear that the wild horse AMLs were set for administrative convenience and not based in science. This EIS itself does not take a hard look at the differences between livestock grazing, wild horse grazing and other large ungulate grazing (other wildlife). In fact this EIS makes the claim that livestock removal might increase the risk of wildfires because not enough vegetation (fire fuels) would be consumed, while at the same time making claims that wild horses should be removed because they consume that very vegetation that cows would consume to mitigate wildfire potential.

The combining of livestock grazing with wild horses (and burros) throughout parts of this EIS is misleading. This EIS on pg. 2-103 states:

> "*The USFWS found improper grazing by domestic livestock and free-roaming horses and burros **can** have negative impacts to sagebrush and GRSG at local scales (**USFWS 2015**) but previously did not find it was a principal factor affecting the status of the species (**USFWS 2010**)."*

Not only does this create doubt as to the impacts of both livestock and wild equines on GRSG, but the impacts from livestock are different from that of wild quines and they should not be combined. For instance horses have upper incisors, and cattle do not. The way they impact vegetation is not the same. Horses cut or mow vegetation while cattle and many other ungulates tear the plants or pull them out by the root. Livestock destroy root systems much more frequently than do equines. Additionally, making blanket statements like this does not consider the sheer numbers of cattle in GRSG habitats compared to wild horses. That would also make a difference in the total impact on GRSG from each species.

Statement from the EIS used several times:

[2] National Research Council. 2013. Using Science to Improve the BLM Wild Horse and Burro Program: A Way Forward. Washington, DC: The National Academies Press. https://doi.org/10.17226/13511.

*"**Wild horse and burro grazing has similar types of effects as livestock grazing** in their effect on soils, vegetation health, species composition, water, and nutrient availability by consuming vegetation, redistributing nutrients and seeds, trampling soils and vegetation, and disrupting microbial systems (Connelly et al. 2004)."*

Statements from Connelly et al. 2004:

"*Horses also represent a grazing disturbance in sagebrush ecosystems **comparable neither to cattle nor native ungulates** (Beever 2003) because of their non-uniform use of the landscape, as well as their management status (horses are neither hunted nor fenced).*"

*"**Sagebrush is very important forage for mule deer** in many parts of the assessment area (Wambolt 1996) and **as such it may suffer damage from browsing**. Although research on the topic is limited, there is some evidence that mule deer population changes in portions of the assessment area may be related to declining sagebrush densities. In Utah, Smith (1949) and Austin et al. (1986) showed declines in sagebrush density in areas protected from livestock grazing but open to mule deer browsing."*

Connelly et al. goes on to discuss the preferences and damage done by deer and elk:

*"**Declines of big sagebrush densities due to heavy deer or elk browsing** (Smith 1949, Austin et al. 1986, McArthur et al. 1988, Patten 1993, Wambolt 1996) suggest that, if warranted, **ungulate browsing may be used as a biocontrol for reducing the densities of sagebrush**. Bork et al. (1998), Laycock (1967) and Mueggler (1950) have shown **long-term declines of three-tip sagebrush from livestock browsing** with recovery of herbaceous vegetation on high elevation sites in Idaho, **suggesting that livestock may also serve a similar function.**"*

Connely et al also points out that perches are not just created by fencing but also powerlines:

"Powerlines create perches and nesting platforms for raptors and corvids (Knight and Kawashima 1993, Steenhof et al. 1993)"

Finally we point out that the Connelly et al paper is not a study. As it states it is a "comprehensive review of the vast array of data presently available". It offers no data that provides quantitative or qualitative proof of claims made in it or in this EIS. Additionally, it was not an independent report, and was funded in part by BLM who has always exhibited a lack of data and scientific basis in making wild horse decisions, including the development of AML's[3].

This EIS at pg. 3-4 under "Threats" states:

"Habitat loss is attributed to large-scale conversions to cultivated croplands or pastures, increasing wildfire frequencies facilitating annual nonnative grass and noxious weed dominance at lower elevations, conifer encroachment, improper livestock grazing, herbicide use and chaining to reduce sagebrush, crested wheatgrass seedings, mineral

[3] IBID

and energy development, wild horse grazing, and recreational activities related to urban growth and increased human populations (Manier et al. 2013; USFWS 2013).”

Manier et al. 2013 does not make this statement that is attributed to them anywhere in the paper. The USFWS 2013 report did not make the above statement either. It did however suggest that data needed to be collected under the “Conservation Option” section of the report:

*“Support **additional research to quantitatively determine impacts of wild horses and burros on sage-grouse habitat parameters**.”*

This USFWS 2013 paper is also an amalgamation of other papers but it supports our allegations that there is NO science that determines that wild horses are a causal factor in the decline of sage grouse populations. In Fact it makes the following statement:

*“**Whether or not this condition is the result of historic or current livestock grazing practices and/or wild horse utilization is debatable**, but the fact that it continues to exist requires more appropriate management actions to improve the condition of the habitat.”*

The EIS at pg. 4-9 states:

*“**Fences used to manage horse distribution** represent a potential source of direct mortality to GRSG (Manier et al. 2013). Year-round water availability in horse herd management areas and wild horse territories is required by the Wild and Free-Roaming Horses and Burros Act of 1971. This can result in year-long use of riparian areas by wild horses and other modifications (e.g., fences, troughs). Negative effects are possible depending on how each facility is constructed. **Range improvements** would increase potential perch sites for avian predators (fences) and potential drowning hazards **(troughs**)*.”

Range improvements in the form of water troughs or fences are not a common thing in wild horse management. This EIS claims that sources of artificial water being removed would reduce the risk of West Nile. This EIS seems to claim that water improvements for wild horses occurs on a regular basis. It does not. Artificial water sources are part of regular livestock, ranching activities on public lands, as are fences. However, it is rare that BLM provides water for wild equines. BLM’s Gus Warr told OWHO President, Theresa J Barbour, that the only time they provide water for wild horses is when they are going to get the animals strong enough to gather them. (see Attachment 2) If tanks put out for livestock are removed that would reduce the potential for West Nile Virus but alternatively removing tanks for wild horse use would have a negligible impact. Additionally, Conelly 2004 confirmed that the wild horses are a dead end host as far as the spread of the virus:

“*Humans and horses are considered "dead end" hosts because they do not typically accumulate the virus at a high enough concentration to infect mosquitoes that bite them*.”

Furthermore, the quote from the EIS above is false. Nowhere in Manier et al. are fences discussed in relation to wild horse management. The report discusses fences constructed for

livestock management throughout, but nowhere does the report state fences are used for wild horses. These statements must be removed from the EIS.

Other important statements made in Manier et al. include:

> *"Repurposing of the most productive sagebrush ecosystems (regions with deep, loamy soils, for example) for agriculture and urban development means that sage-grouse have already been marginalized on lands they share with domestic livestock, industry,* ***herds of introduced horses and burros****, and other sagebrush inhabitants. But in spite of the accumulation of odds against them, many small and large sage-grouse populations persist across the range, albeit population counts have steadily declined in past decades."*

This claim that wild horses are introduced has never been proven and is contentious within the scientific community. The fact is that the history of sage grouse and wild equines coexisting is not documented throughout time. The presence of GRSG was first documented in North America on June 6, 1805 (Meriwether Lewis). The presence of wild horses in their habitats had been occurring for over 300 years if you believe the reintroduction theory for wild horses. This big difference that occurred on these sage grouse habitats after that was the introduction of herds of invasive cattle and sheep. Eventually, adding extractive industry practices overtime added further disturbance to their habitats. The horse populations went into decline from 1900 on and with the decline of millions of wild horses, there began a decline in sage grouse as well. It is nonsensical to believe that the few wild horses left are the issue.

There is less history of sage grouse as a wild species than there is of our wild horses. BLM assumes the extinction theory of wild horses to be fact, when mDNA studies being done are disproving that theory. The length of time that horses are alleged to have been extinct has been getting shorter with each study, and if BLM takes into consideration current science then these results must be addressed instead of the usual claims that they are not native wildlife. However, even when not addressing that specific issue the horses have been here, in the wild, and on the public land areas, since before sage grouse were found. Diminishing their presence as if they are an introduced species gives an appearance that they do not belong. Mary Beth King[4] wrote on March 30, 2023:

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[4] Research looks at origins of presence of horses in North America; Mary Beth King; University of NM; March 30, 2023; in reference to findings from Paa-ko Pueblo, NM: Paa-ko Pueblo, a large Classic Ancestral pueblo and a historic-period pueblo located at the eastern base of the Sandia Mountains, approximately 1 mile north of the town of San Antonio (Bernalillo County);
https://news.unm.edu/news/research-looks-at-origins-of-presence-of-horses-in-north-america
"This work was supported by the National Science Foundation Collaborative Research Award (#1949305, #1949304, #1949305, and #1949283), Marie Sklodowska Curie Actions (programmes HOPE and MethylRIDE), the CNRS and Université Paul Sabatier (International Research Program AnimalFarm), the French Government "Investissement d'Avenir" France Génomique (ANR-10-INBS-09), and the European Research Council (PEGASUS). All protocols for the transmission of sacred and traditional knowledge were followed, and research activities and results were endorsed by an Internal Review Board involving 10 Lakota Elder Knowledge Keepers, who now serve as the Board of Directors of Taku Škaŋ Škaŋ Wasakliyapi: Global Institute for Traditional Sciences (GIFTS)."

"*Direct radiocarbon dating of discoveries ranging from southern Idaho to southwestern Wyoming and northern Kansas showed that horses were present across much of the Great Plains and Rocky Mountains by the early 17th century, and conclusively before the Pueblo Revolt of 1680.*"

Congress gave them wild status in the very name of the act designed to protect them, and the courts upheld that wild designation:

Mountain States V Hodel - 799 F.2d 1423 (10th Cir. 1986)

"*At the outset, it is important to note that* ***wild horses and burros are no less "wild" animals than are the grizzly bears*** *that roam our national parks and forests. Indeed, in the definitional section of the Act,* ***Congress has explicitly declared "all unbranded and unclaimed horses and burros on public lands" to be " wild horses and burros.****" 16 U.S.C. § 1332(b) (1982) (emphasis added)*"
"In structure and purpose, ***the Wild Free-Roaming Horses and Burros Act is nothing more than a land-use regulation enacted by Congress*** *to ensure the survival of a particular species of wildlife."*

This EIS lumps wild equines in with livestock when convenient in an attempt to suppport the desired narrative, but never does the BLM consider them wildlife. We, along with members of the scientific community and many indigenous people regard them as a native wildlife species. This is not mere speculation or belief according to the current studies mentioned above and in Attachment 3). Livestock on the other hand, are an invasive, non-native species and that is not ever something that is contested by the scientific community. The use of livestock on public lands for the purpose of individual or corporate money making, while protected as one of the multiple uses, should not take precedence over federally protected wild animals such as wild horses, or special status species such as GRSG.

Manier et al. also recognized that other uses on sage grouse habitats present greater pressures on GRSG population than that of large herbivores:

"Across the sage-grouse range, the ***impacts of extensive infrastructure are widespread****, including* ***roads, power transmission lines, pipelines, communication towers, and fencing, and localized human activities such as water retention and vegetation treatments*** *have been recognized, but precise influences and remediation solutions are often not well understood. These activities interact with widespread, but* ***generally less intense, pressures including large herbivores*** *(domestic, introduced, and native ungulate populations) in determining range conditions."*

Manier did not study the spread of cheatgrass or medusa head, rather, he cited a 1996 paper by Knapp:

"As this optimal colonist species established, chronic grazing by cattle, sheep, and horses combined with drought and fire to increase the distribution and frequency of

disturbance and further optimize this region for dominance by an annual grass (Knapp, 1996).”

Knapp, while acknowledging that wild horses along with other animals on the range can spread cheat grass also made the following statements:

> *“**It is likely that the domination of cheatgrass would not be as great today without the introduction of livestock. Livestock facilitate the spread of cheatgrass** by two means. First, **excessive grazing reduces the native herbaceous vegetation by cropping the plant so closely that it is unable to capture enough sunlight for sufficient photosynthesis and/or to reach maturity**, when it produces seeds for future germination. Secondly, cheatgrass is easily dispersed by animals because the spikelet contains seeds that either easily adhere to animal hides, or may become embedded in animal hooves. **With hundreds of thousands of livestock grazing the open range every year, cheatgrass was exposed to virtually every available grazing site in the Great Basin.”***

Knapp also noted that:

> “**Fire is the most important factor in assuring and aiding the survival of cheatgrass**....Numerous studies have shown that cheatgrass dominates plant communities after fire to the point where many native perennial plants are unable to re-establish.” (internal footnote omitted)

Knapp[5] only mentions wild horses in discussing the spread of cheatgrass seeds, but ALL animals can spread these seeds, including humans and human activities. So, if BLM seeks to stop the spread of seeds all animals, humans and human activities would have to be restricted. It is unreasonable to use this as a basis to remove horses when they are the least populous species on the land and would have the least impact.

Furthermore, **Manier** et al. 2013 makes the following statement, quoting the Connelly 2004 paper BLM also cites in this EIS:

> “*Livestock grazing can affect soils, vegetation, water, and nutrient availability by consuming or altering vegetation, redistributing nutrients and plant seeds, trampling soils and vegetation, and disrupting microbiotic crusts (Connelly and others, 2004).*”

The difference being that this **EIS** includes wild horses in the claim made by Connelly, where the Manier paper and Conelly himself does not.

> “*Wild horse and burro grazing has similar types of effects as livestock grazing in their effect on soils, vegetation health, species composition, water, and nutrient availability by consuming vegetation, redistributing nutrients and seeds, trampling soils and vegetation, and disrupting microbial systems (Connelly et al. 2004)”*

The addition of wild horses and burros to what Connelly actually said is fraud.

[5] Knapp, P.A. (1996) Cheatgrass (Bromus tectorum L.) dominance in the Great Basin Desert: History, persistence, and influences to human activities. Global Environmental Change 6:37-52

Connelly actually states:

> *"Livestock grazing can affect soils, vegetation, and animal communities (Jones 2000). Livestock consume or alter vegetation, redistribute nutrients and plant seeds, trample soils and sagebrush plants, and can disrupt microbiotic crusts (Miller et al. 1994, West 1996, Belnap and Lange 2001)."*

In summary of these 3 quotes, this EIS is the only statement that includes wild horses, neither study referenced includes wild horses and burros. This claim needs to be removed from this EIS throughout (it is made at least 4 times), which we address in further detail below.

The EIS pgs. 4-62 to 4-65:

> ***"****Impacts under all alternatives would be limited to any future changes that* ***may result in AML and/or acreage adjustment as well as reconsideration of herd management area designations*** *that are based on achievement of GRSG habitat objectives for improving GRSG habitat conditions."*

While there is a case to be made that wild horse management should be done in such a way to best protect GRSG and their shared habitats, this would first need to be a situation where the rangeland health assessments are being done.

Secondly, when assessments of the range are done, they need to include utilization by species. Most of the areas also overlap with livestock allotments. If BLM continues to ignore the necessity for completing rangeland health assessments, there is no possible way to determine that horses, rather than livestock, are doing the damage to overlapping habitats for GRSG. Adjusting AML's based upon mere observation of land health degradation is not a sound scientific management plan, thus would not be supported.

Legally, the plan to evaluate AML's based on GRSG habitat conditions would diminish the plain language of the WHBA that gives wild horses "principal" use of those lands. Again, we are not saying that we do not support the need for GRSG habitat protections but we do not see that the BLM, in this EIS, is attempting to put wild horses on equal footing or write this plan in such a way that the WHBA is the prevailing law when considering actions for the herds on sage grouse areas. This EIS leans heavily in favor of livestock remaining on the land, while at the same time removing or reducing wild horse populations.

Still from the EIS pgs. 4-62 to 4-65:

> "Initially, the **AML** for herd management areas are **established in RMPs** at the outset of planning and **adjusted based on monitoring data** throughout the life of the RMP."

This statement is incorrect. Many of the HMAs have AMLs that were set in Allotment plans, Final Multiple Use Decisions etc., not in RMPs. We addressed the NAS Report recommendations herein which suggest the BLM reevaluate AMLs and base them on science rather than administrative convenience. Basically, BLM sat down with public lands permittees

and hashed out AUM allocations for livestock, and what was leftover was given to wild horses/burros and other grazing wildlife. Very few HMAs changed any forage allocations for livestock.

Additionally, from the EIS pgs. 4-62 to 4-65:

> *"Gathers can be conducted in **emergency situations** when the health of the population is at risk **due to lack of forage or water**. In some situations, wildfire may be considered as reasoning for an emergency gather."*

According to the BLM Handbook 4700-1 lack of forage and or water are escalating problems not emergencies. We have frequently appealed decisions to gather horses for lack of forage/water claiming it is an emergency which allows BLM to avoid doing an EA and going through the NEPA process.

> *"4.7.1 Escalating Problems*
> *Escalating problems are defined as conditions that deteriorate over time. The key indicator is a decline in the amount of forage or water available for WH&B use, which result in negative impacts to animal condition and rangeland health. Causal factors are normally drought or animal numbers in excess of AML. These situations can be detected in advance and are managed through the normal planning process. See BLM Manual*
>
> *4.7.2 Emergencies*
> *Emergencies generally are unexpected events that threaten the health and welfare of a WH&B population and/or their habitat. Examples of emergencies include fire, insect infestation, disease, or other events of a catastrophic and unanticipated nature. Immediate action is normally required.* "

And another statement from the EIS pgs. 4-62 to 4-65:

> *" Across all alternatives, use of **contraceptives and other population growth suppression** to manage wild horse and burro numbers **would be implemented** to assist in the achievement and maintenance of AML."*

This amendment to the GRSG plan cannot create a mandate or policy to implement population control methods. The decision to implement such controls must be done through a herd management decision and would require, at a minimum, an EA to present the possible fertility control measures considered, evaluate the genetic health of the herd, etc. This statement must be removed from this EIS because it is outside BLMs statutory authority.

Finally, from the EIS pgs. 4-62 to 4-65:

> *"Table **3-6** displays the total number of herd management areas, and their associated AMLs, that overlap with GRSG HMAs."*

This appears to be the wrong table. Table 3.6 only pertains to livestock. Was this a section that BLM copy pasted from livestock and forgot to change the table number? We believe it should be Table 3-4 however, that has severe flaws which we discuss further below.

Table 3-6. Count of Allotments with at least 15% PHMA by Land Health Standard Category

Land Health Evaluation Reporting Category	Total # Allotments	% of Total
Category A: Rangelands meeting all standards or making significant progress toward meeting the standard	5140	53.17%
Category B: Rangelands not meeting all standards or making significant progress toward meeting the standards, but appropriate action has been taken to ensure significant progress toward meeting the standards (livestock is a significant factor)	911	9.42%
Category C: Rangelands not meeting standards or making significant progress toward meeting the standards, and no appropriate action has been taken to ensure significant progress toward meeting the standards (livestock is a significant factor)	95	0.98%
Category D: Rangelands not meeting all standards or making significant progress toward meeting the standards due to causes other than livestock grazing	742	7.68%
Category F: Rangelands not meeting standards or making significant progress, but determination of causal factor(s) has not been completed	139	1.44%
Unevaluated: Rangelands that have not been evaluated.	1958	20.25%
No information available: Allotments not found in master land health status dataset	682	7.05%

Source: BLM GIS 2023

The EIS at pg. 3-5 states:

> *"Wild horse and burro grazing disturbances have negatively influenced sage-grouse lekking activities (Muñoz et al. 2021), at times restricting GRSG breeding activities to areas that have not been disrupted by free roaming horses. Sage-grouse population growth is sensitive to breeding success and can be impacted by wild horse and burro disturbances that degrade sagebrush ecosystems (Coates et al. 2021)."*

Munoz did not state that burros negatively impact lekking activities. In fact she said:

> "*Although burros were present at some sites, we did not observe them occupying sage-grouse leks*." This was the ONLY statement made about burros in the Munoz paper.

Moreover, Munoz admits she is speculating when making assumptions based on observation:

> *"We **speculate** that differences in sage-grouse lekking activity **may be** influenced **potentially** by differences in size, novelty, or behavior of Great Basin ungulates. First, sage-grouse were most likely to be absent in the presence of cattle and horses, which were the largest ungulates observed in our study."*

Similarly Coates did not state that burros had a negative impact on GRSG lekking activities. He Stated:

> *"Additionally, few of the leks we monitored overlapped HOAs with burros and horses (n = 17, 2% of total) and no leks overlapped management areas with only burro populations. Therefore **we did not index burro density for this study**."*

Coates et al. acknowledged that research in this area (horse impacts for sage grouse population) is lacking:

> *"Although a strong body of research indicates that overabundant populations of horses degrade sagebrush ecosystems, **empirical evidence linking horse abundance to sage-grouse population dynamics is missing**."*

This paper by Coates et al. is another amalgamation of other papers. Even where they talk about observing the leks they refer to another study. It is unclear whether or not Coates et al. ever went to these leks themselves and no raw data was provided indicating that they did.

Although Coates acknowledges that cattle were also present, the impact they have on sage grouse populations was not discussed or disclosed in the findings. It is impossible to assign damage to one species without assessing all species on the range.

In fact this paper attempts to skew information in regard to livestock presence by stating:

> "*Sage-grouse move to mesic areas at higher elevations during summer to access increased forb availability (Patterson 1952, Klebenow and Gray 1968, Connelly et al. 2004) that is directly linked to brood survival (Casazza et al. 2011, Coates et al. 2017). Lower elevation regions are more susceptible to invasion by cheatgrass (Chambers et al. 2007), are more readily grazed by cattle (Ganskopp and Vavra 1987), and often have greater raven occupancy and density (O'Neil et al. 2018, Coates et al. 2020)."*

This clearly indicates that the change in flora due to plants like cheatgrass has caused sage grouse to move to higher elevations. Cattle do not like to climb steep inclines or rocky mountainous areas and prefer to stay in lower, flatter areas. The same time of the year that sage grouse move to high elevations the horses typically do as well.

Coates et al. also state:

> *"...horses are not constrained to specific locations, often grazing continuously on preferred plant species and concentrating in riparian areas where ecological degradation is intensified (Kaweck et al. 2018)."*

> "*...horses move freely within the landscape uninhibited by fencing and other barriers*"

First we point out that there are very, very few wild horse HMAs where horses can roam freely or unrestricted due to livestock fencing.

Furthermore, Coates et al. using sources like Kaweck invalidates any claims such as this made in the report. Kaweck is not a valid scientific study. First of all you start with a study where the BLM and the ranchers chose the plot points. In order for a study to produce valid results the plot points must be chosen randomly[6].

And this study states that horses in the wild are really "biologically feral". One would think that one of the authors, John Severson, a USGS Wildlife biologist would know this is not a correct statement. The term feral is one that is compared to wild, these are legal designations that our government decided when they passed the WILD Free-Roaming Horses and Burros Act. As mentioned above the courts[7] have upheld that legal designation. There is nothing 'biological' about the term feral. The biological argument surrounding our wild horses is the scientific debate of native versus invasive.

The Kaweck study only had cattle on 4 out of 6 of the plots for 4 months. And Kaweck did this study during the time of the Soda Fire which would alter any 'normal' activity, i.e. use of resources and movements. The study report also states that they "believe" the fencing used on exclosures was high enough to stop animals from reaching over the fence, but they also state they used field cameras, so why wouldn't they 'know' the fences were high enough?

Furthermore, Kaweck states they used the Spearman method to discern what animal had utilized an area. The Spearman method can be applied to radiologic studies, but certainly does not apply in a field study of animals. Kaweck stated they used cameras but those cameras were not in use for the entire study due to fire or theft. So how much of the study was estimated versus actual observances?

Kaweck using Spearman to estimate. "*To assess whether the presence of one species of animal(horses, cattle, or wildlife) was associated with riparian use by other animal species, we used Spearman's rank correlation to determine the strength, direction, and significance of the correlation between weekly observations of each species at each of the eight study sites."*

Kaweck also stated: *"Within those 17,891 photos, 44,408 animal occurrences were recorded. Of the 8,134 photos taken in the Challis area, 15,715 animal occurrences were documented, of which 15% were wild horses, 80% were cattle, and 5% were wildlife. In the Owyhee area, 9,757 photos recorded 28,693 animal occurrences, of which 35% were wild horses, 64% were cattle, and 1% was wildlife."*

---

[6] BLM Technical Reference 1734-3; Utilization Studies and Residual Measurements [Supercedes BLM Technical Reference 4400-3] Interagency 1996

[7] Mountain States V Hodel; "At the outset, it is important to note that **wild horses and burros are no less "wild" animals than are the grizzly bears** that roam our national parks and forests. Indeed, in the definitional section of the Act, Congress has explicitly declared "all unbranded and unclaimed horses and burros on public lands" to be " wild horses and burros." 16 U.S.C. § 1332(b) (1982) (emphasis added)"

Moreover, Coates lists causes for sage grouse population decline, and states that while there is an overlap between the habitats of GRSG and horse studies regarding population dynamics are non-existent.

> *"Sage-grouse are experiencing **long-term population declines** in semi-arid environments (Garton et al. 2015) and are facing a myriad of **threats** that **include wildfire and invasive grass cycles** (Chambers et al. 2014, Coates et al. 2016b), **expansion of pines** (Pinus spp.) **and junipers** (Juniperus spp.; Baruch-Mordo et al. 2013, Coates et al. 2017), **anthropogenic development** (Green et al. 2017), and **increased drought** (Coates et al. 2016b). **Despite distributional overlap between sage-grouse and horses range-wide** (Beever and Aldridge 2011), coupled with compelling evidence that most HMAs are exceeding set AMLmax (BLM 2020a), **studies that quantify relationships between horse abundance and sage-grouse population dynamics are notably missing."***

Another paragraph from Coates states:

> *"Managed livestock, particularly cattle, are supplemented with salt, mineral, and water placement and graze during planned periods and locations, which allows direct management of land deferment and rest (Davies and Boyd 2019). Absent management action, where options are much more limited owing to the Wild Free-Roaming Horses and Burros Act (as amended), horses are not constrained to specific locations, often grazing continuously on preferred plant species and concentrating in riparian areas where ecological degradation is intensified (Kaweck et al. 2018). Collectively, the magnitude of these adverse effects is likely exacerbated as horse populations become increasingly overabundant relative to AMLmax (i.e., exceed AMLmax) and as horses move freely within the landscape uninhibited by fencing and other barriers. Additionally, previous research indicates that behavioral tendencies and interactions between horses and native ungulates can lead to displacement, even from the presence of a single horse (Berger 1985), and exclusion from water sources (Gooch et al. 2017).*

From these claims we already addressed the reference to Kaweck. The statement by Davies and Boyd is only true in areas where cattle grazing is either controlled by fencing, or the cattle are monitored, because we frequently find them outside of their grazing allotments. Additionally the next statement ("*horses are not constrained*…") is false. Wild horse HMAs are crisscrossed with internal fencing and outside fencing. It is rare that wild horses get to roam freely (ironic considering the name of the act that protects them). The next claims of displacement and exclusion from water sources are attributed to Berger and Gooch. The Berger reference is a book, so without purchasing the book we are not able to read and verify his findings.

Gooch indicated horses have been dominant with ungulates, however she cited Berger 1985. Gooch observed 3 times (0.02% of all observed interactions), what ***might*** have been a negative interaction between wild horses and pronghorn. She did however make these statements:

> "*In his observations of watering holes on the Sheldon National Wildlife Refuge (SNWR),* ***Meeker (1979) found no evidence of negative interactions between horses and***

> ***pronghorn****. He noted some positive interactions, in which pronghorn waited outside the water holes until horses entered first (Meeker, 1979*)" (emphasis added)
>
> **"*More research is needed to determine if horses are competing with pronghorn for water*."** (emphasis added)

This further invalidates the Coates et al. report. Furthermore, the Coates et al. report used computer modeling and estimation, not on-ground, actual data.

Coates also states:

> **"*Research that investigates the influences of reducing cattle AUMs*** *(e.g., lessening cattle grazing pressure) on estimated changes in the effects of %*AML_{max} ***would be helpful.*** *Cattle-induced effects on the landscape likely differ from horse-induced effects because of fundamental differences in physiology and behavior between the species (Beever 2003)...*"

This statement supports both our claim that research surrounding GRSG is lacking, livestock impacts have not been fully analyzed and that horses and livestock cannot be lumped together.

Finally Coates et al states:

> *"Exceeding current* AML_{max}*, or adjusting* AML_{max} *to higher values within the model, resulted in clear evidence of negative effects to sage-grouse population λ. In contrast,* ***model predictions*** *indicated that when horse populations did not exceed current* AML_{max} *values, there was no significant evidence of declines in sage-grouse population λ when compared to areas where horses were assumed absent."*

This along with other predictions made in the reports are all from modeling predictions. There is no raw data provided in this study to be analyzed which would support the findings. There is no real life, on the ground assessment that shows what other covariates might have affected sage grouse populations. *Assuming* that the number of horses present was the only causal factor based on predictive modeling does not provide actual scientific study.

The entire report was done using internal scientists, funding, and was not independent. It should be removed from this EIS. Coates et al.:

> *"****Funding*** *for this work was* ***provided by federal partners*** *as* ***part of*** *the Results Oriented Grazing for Ecological Resiliency* ***collaborative between ranchers, organizations, the university, and state and federal agencies****.* ***Additional funding*** *was* ***provided by BLM and the United States Geological Survey*** *Ecosystems Mission Area."*

The EIS at pg. 3-11 further uses Coates et al.:

> *"The Wild Free-Roaming Horses and Burros Act of 1971 <u>was created to manage population levels</u> of herds to facilitate and protect "a thriving natural ecological balance" (Coates et al. 2021)."*

This is not what Coates et al. stated. The report stated:

> *"A fundamental goal of the Wild Free-Roaming Horses and Burros Act (1971:649) is to manage herds within a range of population sizes that facilitate and protect "a thriving natural ecological balance."*

The WHA was created because the states could not be trusted to manage wild horse populations in a humane manner, and because wild horse populations were "fast disappearing".

Moreover, when Congress discussed the Act, according to the 92nd Senate Congressional Committee Report 92-242, their intent was for the wild horses to be managed as components of the land, not managed in "*refuge or zoolike areas*". BLM uses the fact that Congress did not intend for them to have "exclusive" use of the lands set aside by the Act. However, BLM has gone beyond statutory authorization to claim that they also no longer have "principal" use of any area unless they magically deem it a Range, which goes directly against Congress' intent.

That Senate Congressional Report states:

> "***The principal goal of this legislation is to provide for the protection of the animals from man***…" additionally they state: "*The Committee recognizes that some control over the numbers of animals may be necessary in order to maintain an ecological balance in an area. Guidelines for reducing the population of wild free-roaming horses or burros in an area are provided in the measure but it should be noted that* ***any reduction should be carefully weighed before being undertaken.*** *The Committee does not intend that the provision for a reduction in numbers as contained in the measure be considered a license for indiscriminate slaughter or removal of the wild free-roaming horses or burros*." (emphasis added)

This proposed amendment to the sage grouse plan goes against the intent of Congress and the plain language of the WHBA (Public Law 92-195). As components of the land, and multiple use they should be managed like other special status wildlife. They should have been protected on the public lands "where they roamed in 1971", not on areas set aside by BLM and ranchers, and then over time diminished acreage to the point that BLM now screams overpopulation.

The EIS at pg. 3-11 states:

> *"In* ***recent years, the population of wild horses on public land has greatly increased****."*

This statement is also not correct. Wild horse (and burro) populations on Bureau of Land Management (BLM) lands in the United States have declined[8] two years in a row:

- March 2021: 86,189 wild horses and burros
- March 2022: 82,384 wild horses and burros
- March 2024: 73,520 wild horses and burros

We believe this decline is in part due to gathers, but also believe it is due to the increased use of fertility control measures. The EIS needs to be corrected and this statement needs to be

[8] Bureau of Land Management; Program Data: https://www.blm.gov/programs/wild-horse-and-burro/about-the-program/program-data

removed. Moreover, we point out that the number of wild horses and burros is nearing the number of horses and burros that were on the land during the first census in 1973. We further point out that the first survey was done after massive numbers of wild horses and burros were removed after the WHBA was passed in 1971 as ranchers claimed large numbers of them as their own. So the number of horses and burros on the land when Congress unanimously found they were fast disappearing was significantly higher that the first population survey numbers (See attachment 1). Being near, or possibly below that number right now should cause alarm IF BLM was being honest. Attachment one also provides instances where the real number of wild horses and burros in 1971 is known to have been much higher than what BLM still claims on their website, reports to media, and Congress. (An apparent Title 18 violation.)

Furthermore, BLM states on pg. 3-30:

> "The estimated population size of wild horses and burros within each WHB HMA is based on helicopter, fixed-wing, or by ground-based inventories, which occur every 2 to 3 years"

This statement is also false. In fact, a recent EA[9] that we commented on was based on an aerial survey that was 7 years old. Most of the time BLM uses an average annual population growth rate (18-25%) and adds it to the last known population to estimate herd size. Aerial surveys are done when BLM is preparing an EA to do a gather, except in the case we mentioned where they didn't even do an actual aerial survey for 2 herd areas before proposing a 10-year gather and fertility control plan. Sometimes the surveys are 2 or 3 years old before the EA itself is produced. Additionally, we have never seen a survey that was done via ground-based inventory by BLM. This statement in the EIS should be removed.

Furthermore the EIS states:

> *"Recent research suggests wild horses can directly and indirectly disrupt native wildlife populations within sagebrush ecosystems (Munoz et al. 2021)."*

Munoz et al .2021 states:

> *"Given the rapid population increase, growing evidence suggests that free-roaming horses can directly and indirectly disrupt native wildlife populations inhabiting sagebrush ecosystems,* ***yet most research has focused on intra-guild competition among large herbivores****. For example, free-roaming horses monopolize and actively exclude native ungulates from limited water sources through interference competition (Hall et al., 2018). In contrast,* ***relatively few studies have evaluated interspecific interactions between free-roaming horses and avian wildlife in sagebrush ecosystems, including sage-grouse****. Potential for direct interactions exists given the high degree of range overlap between sage-grouse and free-roaming horses (Beever and Aldridge, 2011)"*

BLM does not manage the public lands on a whole ecosystem approach. The interactions among species are the foundations of the structure and integrity of ecological communities. The

[9] DOI-BLM-ORWA-B050-2020-0004-EA

carnivore guild is mainly shaped by competition and intraguild predation. Large carnivores regulate trophic levels by controlling prey populations and by moderating mesocarnivore populations and their effects, thus indirectly affecting both herbivore and plant communities. However, their ecological roles are compromised by anthropogenic-induced habitat loss and fragmentation, prey depletion, and mortality due to direct persecution (Ugyen Penjor 2022[10]). Studies have shown that extirpation of apex predators from an ecosystem leads to an increase in ungulate populations, which in turn results in overgrazing and suppression of plant growth and ultimately degradation of habitat for a range of species.

Additionally, we provide a rebuttal of the Hall paper in Attachment 4. The rebuttal provides BLM references that also oppose this statement made in the Hall paper. Even the next reference cited by Munoz (Beever/Aldridge 2001) provides a quote opposing Hall's claims of monopolization of water sources:

> *"Horses also spend considerably less time at watering locations than do cattle (Meeker 1979, Ganskopp and Vavra 1986)"*

Furthermore, Munoz, citing a now 13 year old study (Beever and Aldridge, 2011) to claim there might be potential for interactions between sage grouse and wild horses proves that the subject is still under-researched.

In opposition to what Munoz said about Beever and Aldridge 2011 the actual statement made made in Beever/Aldridge was:

> "***The extent to which free-roaming equids in sagebrush communities directly or indirectly alter the availability of insects important to Greater Sage-Grouse broods at these mesic sites is currently unknown."***

All of these claims with flawed references and misquotes should be removed from this EIS, including all information that was supported by them.

This EIS frequently claims:

> *"Wild horse presence causes fragmented and reduced shrub cover, increase soil compaction and erosion, and may contribute to the spread of invasive grasses (Coates et al. 2021; Munoz et al. 2021; Henning et al. 2021)."*

In response to this claim and others throughout this EIS one of our science writers, wildlife ecologist, Craig Downer says:

> *"The studies presented are biased and target the wild horses for blame concerning the decline of the Greater Sage Grouse while ignoring the major factors that are, in fact, contributing to this decline. For example, the fences that are erected to separate livestock grazing allotments provide perches for predacious raptors that hunt the Greater Sage Grouse. Also, these biased studies ignore many of the positive contributions that*

[10] Penjor, U., Astaras, C., Cushman, S. A., Kaszta, Ż., & Macdonald, D. W. (2022). Contrasting effects of human settlement on the interaction among sympatric apex carnivores. Proceedings of the Royal Society B: Biological Sciences, 289(1973). https://doi.org/10.1098/rspb.2021.2681

the naturally living horses make including the dispersal of tall bunch grass seeds that go on to germinate and provide the much-needed cover that is needed for the successful reproduction of this grouse. Also, the horses' droppings enrich soils to a much greater degree than is the case with the ruminant and cloven-hoofed herbivores that decompose their consumed forage to a much greater degree than the horses do. Also where is the consideration of the significant negative impacts of Off-Highway-Vehicles that pervade so many of the public lands where the GSG occur or of the livestock themselves whose sharp, claw-like hooves are much more damaging to riparian habitats when compared with the blunt, rounded hooves of the horses."

This EIS also claims:
Wild horses may be a particular threat during the lekking season. Research suggests that male GRSG respond differently when native (pronghorn and mule deer) and non-native (wild horses and cattle) ungulates are on established leks (Munoz et al. 2021). **GRSG continue to display at leks when native ungulates are present, but they are not usually detected when non-native ungulates are present** (Munoz et al. 2021).

According to Munoz, sage grouse are absent from leks or don't display when "*non-native*" species are present. But Munoz asserts they prefer cattle to horses because she observed 2 instances of horses being aggressive toward sage grouse and she claims they are often aggressive toward other native wildlife as well. Two observations of aggression do not prove a claim like that, she provides no proof, or what circumstances existed, for example it could be a case where a sage grouse pecked the leg of a horse to consume a bug, and the horse kicked because something pecked its leg. Her vague statement must be dismissed. Additionally, we have refuted herein, and in attachments, further assertions of wild horse aggression toward other species. They are prey animals, they do not have antlers or horns, and are not aggressive toward animals who do because that could cause them injury. We have provided examples of wild horses coexisting with other species (including sage grouse) in Attachment 5.

We previously discussed the assertion that horses are non-native, which is a scientifically unproven statement. Also, they should not be lumped together with cattle or other non-native livestock. When they lump together wild horses and domestic livestock for this EIS it shows a bias that and does not acknowledge the wild behaviors of our legally wild horses. This statement in the EIS (above) also does not provide a qualitative analysis that shows the differences between the number of displays when livestock were present versus the number of times GRSG displayed when wild horses were present. We also provided statements from research (above) that showed that sage grouse avoid areas when mule deer are present. So, this data needs to be quantified and provided to the public.

Coates was a co-author of the Munoz paper which seemed to use the Coates et al. 2021 study as a reference. Additionally, Munoz was a co-author of the Coates et al. paper. Both papers use the same cited references. This EIS could reduce paperwork and reading by picking one because they both say the same thing and cite the same studies. It seems to be a huge waste of taxpayer money for these reports to be written over and over stating the same things. And

they aren't really necessary when all they do is cite other studies. Of course if BLM is only trying to make it seem there is a larger volume of works that claim various things we see why they would pay for several people to rewrite the same information citing the same sources.

There was a statement "*the authors have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.*" This is not true, as the BLM, USGS and other government entities funded the studies, and use, reuse, the same authors instead of utilizing independent scientists. This creates a clear personal relationship with financial interests. It all can bias the findings, afterall, do you produce a study report that opposes what your boss wants to find and believe you will continue working for them.

They thanked Tatiana Gettelman who "brought this issue to their attention." She claims that: *"Stewardship-minded ranchers are helping reverse this decline by conserving and enhancing sagebrush habitat. And their conservation practices benefit more than just wildlife. They are improving the long-term sustainability of their grazing lands. As the saying goes, "what's good for the bird is good for the herd."*

This further supports our allegations that this EIS leans heavily in favor of public lands livestock grazing permittees, not true conservation of GRSG and their habitats.

This EIS states:
*"A subset of these areas (approximately **31.6 million acres nationwide**) have been determined suitable for long-term management of wild horses and burros and are known as herd management areas (WHB HMAs)."*

According to the BLM website[11]:
*"The Bureau of Land Management manages and protects wild horses and burros on **26.9 million acres of public lands"***

It makes no logical sense that BLM would manage horses on a smaller number of acres than this EIS claims are suitable acres, and claim are HMAs. Either this is an error or an explanation needs to be provided for the nearly 5 million acre difference.

This EIS states:

> "*Wild horses and burros are a long-lived species with annual survival or other time period rates estimated between 80 and 97 percent (Wolfe 1980; Eberhardt et al. 1982; Garrott and Taylor 1990).*"

Quotes from Eberhardt et al. 1982:
"*Survival estimates for adult horses range from 70 to 80% per year (Wolfe 1980:Table 5) to 95% and higher (National Research Council 1980)…**It is important to stress that the herds studied should not be regarded as typical of all feral horse herds. There are situations in which the rates of increase are appreciably smaller than those reported here and herds in***

[11] Wild Horse and Burro Program; https://www.blm.gov/whb

***the same management districts as those reported here appear to have lower rates**, but are unfortunately not as well documented as those described above. **Generalizations about all herds should not be made from the observed data**, but research and management should be conducted in awareness that such rates are feasible and have been observed.*"

Wolfe 1980 quotes:
"Provisional estimates of first-year survival rates span the general range of 50-70 percent, while those for adults **may** approximate 80-85 percent."

However Wolfe, using their preferred Chapman-Robson survival estimator came up with the following survival estimates:

Table 5. Implied adult survival rates of feral horses.[a].

Population	Sex and age segment	Sample size[b]	Implied survival rate and 95% confidence interval[c]	x^2 value for fit to geometric distribution
Calif-1	males (2-9)	19	0.67 (0.54-0.80)	3.36 (df = 1)
	females (2-9)	40	0.79 (0.66-0.92)	0.43 (df = 3)
Colo-1	females (2-5)	109	0.75 (0.69-0.81)	1.41 (df = 2)
Ore-4	Composite (2-9)	86	0.80 (0.71-0.88)	8.30 (df = 6)
Ore-5	Composite (3-9)	135	0.76 (0.68-0.83)	6.05 (df = 5)
Rock Springs	males (2-9)	92	0.66 (0.59-0.74)	4.65 (df = 3)
	females (6-9)	45	0.71 (0.61-0.81)	3.84 (df = 2)
Utah-1	Composite (3-9)	23	0.67 (0.51-0.84)	2.27 (df= 2)

The Garrett and Taylor 1990 paper is not accessible online. The other 2 references cited do not support the claim made in the EIS. Both of them discuss the great degree of error possible when attempting to find an average survival rate. Both point out other studies that attempt to find the rate, and the errors in their methods.

This EIS has serious errors in:
3.7.1 Current Conditions
"***In the planning area, there are approximately 15 million acres of WHB HMAs**....Current herd area, herd management areas, and estimated population of wild horse and burro within the project area are listed in **Table 3-4 (Appendix 9)**. Wild horse and burro populations within the planning area **continue to grow**, often exceeding AMLs. **Wild horses and burros can be causal factors for failing to meet applicable Land Health standards**.*"

Table 3-4. Wild Horse and Burro Herd Management Areas by State

State	Acres of Wild Horse and Burro WHB HMAs	Statewide "High" Allowable Management Level (AML)	Estimated Current Population	Percent Above AML
California	2,053,082	2,200	10,140	361%
Colorado	365,988	827	1,873	126%
Idaho	383,894	617	555	0%
Montana	27,094	120	195	63%
Nevada	14,032,947	12,811	46,570	264%
Oregon	2,733,577	2,700	4,532	68%
Utah	3,644,013	3,795	4,017	115%
Wyoming	26,917,766	2,200	4,734	115%
Total	**2,053,082**	**26,785**	**82,384**	**208%**

Source: BLM 2022b

First we point out the total acreage only includes California. It should be 50,158,361 according to this Table, which is also not the 15 million acres you stated were the total for Table 3-4.

Additionally, this Table does not include AZ or NM but gives the total "allowable" AML of 26,785 which is the total national AML.

Then the EIS states the populations continue to grow which does not take into consideration that between this 2022 estimate and 2024 population nationally has declined.

The EIS states that horses can be causal factors for failing to meet land health standards. BLM is not doing rangeland assessments, and the ones that have been done have not followed BLM Technical Reference 1734-3 and do not provide species specific utilization data.

Moreover, the acreage listed in Table 3-4 does not match the acreage given on Table 3-5 below.

Table 3-5. Acres of Wild Horse and Burro Herd Management Areas in GRSG Habitat Management Areas

State	Acres
California	601,000
Colorado	384,000
Idaho	418,000
Montana	38,000
Nevada	13,850,000
Oregon	2,820,000
Utah	2,473,000
Wyoming	4,781,000
Total	**25,365,000**

Source: BLM GIS 2023

Table 3-4 gives 4 states where total HMA acreage in the state is less than the HMA acreage on GRSG habitats in Table 3-5. For example Colorado according to Table 3-4 has 365,988 HMA

acres for WHB. But Table 3-5 claims Co HMA acres on GRSG habitat are 384,000, which is more than the total acres in the state that are WHB HMA.

According to BLM webpages for each state as of today there are differences in acreage and in one instance AML that are presented in Table 3-4 of this EIS. The information provided as of today (June 12, 2024) the BLM webpages give the following numbers:

- BLM California[12] manages 21 wild horse and burro herd management areas (HMAs) on approximately 2.5 million acres. (A difference of nearly 5 million acres from the amount on Table 3.4)
- BLM Montana/Dakotas[13] manages the Pryor Mountain Wild Horse Range on approximately 36,000 acres. (A difference of roughly 9,000 acres)
- BLM Nevada[14] manages 83 wild horse and burro herd management areas on approximately 15.6 million acres. (A difference of nearly 1.6 million acres)
- BLM Utah[15] manages 19 wild horse and burro herd management areas on nearly 2.5 million acres. The combined appropriate management level for all HMAs in the state is 1,956 animals. (A difference of 1.1 million acres and the AML is nearly doubled on your table from the BLM webpage)
- BLM Wyoming[16] manages 16 wild horse herd management areas on nearly 5 million acres (a difference of about 21 million acres)

The total AML according to BLM state webpages (using only the states included on Table 3-4) for wild horses and burros is 24,931. If we add the allowable AML for AZ and NM to those we come up with 26,690 which is still less than what Table 3-4 comes up with. Included in Attachment 1 is information where BLM includes acreage that was zeroed out for WHB management but still includes it in the totals on their webpages.

Additionally, the number of HMA acres in Table 3-4 is over 50 million, nearly twice what the BLM claims is the total HMA acres (including AZ and NM) which is only 26.9 million acres[17]. This statement and the chart need to be corrected, clarified and/or removed.

Based on the information provided both on BLM webpages, and in this EIS there is **no transparency** provided to the public about how many acres for WHB, or horses/burros are actually managed by the BLM.

The EIS continues saying:

> **"Currently, the AMLs are being exceeded by an average of 3.6 times greater than the "high" AML value across the planning area (Table 3-4 [Appendix 9]).** The total

[12] https://www.blm.gov/programs/wild-horse-and-burro/herd-management/herd-management-areas/california
[13] https://www.blm.gov/programs/wild-horse-and-burro/herd-management/herd-management-area/montana-dakotas
[14] https://www.blm.gov/programs/wild-horse-and-burro/herd-management/herd-management-areas/nevada
[15] https://www.blm.gov/programs/wild-horse-and-burro/herd-management/herd-management-areas/utah
[16] https://www.blm.gov/programs/wild-horse-and-burro/herd-management/herd-management-areas/wyoming
[17] https://www.blm.gov/whb

number of AML acres which overlap with GRSG Habitat Management Areas is displayed in Table 3-5 (Appendix 9)."

Again, we point out that the population is in decline, which would bring the current population[18] to 2.7 times the desired national population, not 3.6. Additionally, the statement says "*AML acres*" which we believe was meant to say "HMA acres".

This EIS on pg. I-12 states:

"*Some counties did express support for the wild horse and burro management under Alternative 3."*

Also, during the John Day-Snake RAC[19] meeting on June 6, 2024, BLM's Angel Dawson stated that Oregon Department of Fish and Wildlife wants the herds managed at low AML.

There is an old theory that "*the states manage wildlife and federal land agencies only manage wildlife habitat*" which is not only wrong from a legal standpoint but it leads to fragmented approaches to wildlife conservation, unproductive battles over agency turf, and an abdication of federal responsibility over wildlife. Furthermore, the states' trust responsibilities for wildlife are subordinate to the federal government's statutory and trust obligations over federal lands, their integral resources and federally protected species.

The management of herds at the lower end of the Appropriate Management Level (AML) would compromise the AML range designed for each herd, which allows a herd to replenish after a gather until it reaches the upper AML. This approach is intended to safeguard the genetic health of herds, which often have AMLs that fall significantly below the recommended population size[20] required for a healthy, genetically diverse population of wild horses. Once again this EIS making decisions based on the wishes of ODFW, as with other state or local agencies wishes, is beyond current management authority according to the approved management plans for wild horse herds. Any decisions to alter the management of populations would necessitate new National Environmental Policy Act (NEPA) planning and assessment projects for each herd.

Finally, we remind the BLM again, that the Wild Horse and Burro Act is a land use policy that predates the Sage Grouse plan and as such this plan must conform with that land use plan, not amend it without statutory authority to do so.

During the same RAC meeting Angel Dawson stated that livestock are not considered a problem for sage grouse, it is just the fences that are an issue. We all know that without

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[18] BLM 2024 wild horse and burro estimates show reduced overpopulation; https://www.blm.gov/press-release/blm-2024-wild-horse-and-burro-estimates-show-reduced-overpopulation

[19] John Day-Snake RAC…ODFW wants OR herds managed at LOW AML. https://youtu.be/iHRlXZuwFSg at approx 23:50 in the video.

[20] A Demographic Analysis, Group Dynamics, and Genetic Effective Number in the Pryor Mountain Wild Horse Population, 1992-1997; By Francis J. Singer, Linda Zeigenfuss; 2010; Biological Resources Division U.S. Geological Survey; Natural Resources Ecology Laboratory Colorado State University, Fort Collins, CO 80523; Linda Coates-Markle, Billings Field Office Bureau of Land Management 5001 Southgate Drive Billings, MT 59107-6800 and Rev. Floyd Schwieger, 472 W. 7th Street Lovell, WY 82431

livestock there would be almost no fences on our public lands. So the two go hand in hand. There would still be some exclusion fences. BLM should provide some statistical data of how many fences could be removed if livestock containment was not needed in GRSG habitat areas.

As stated herein wild horse fences are not common, but are used along major roadways in some instances, and some exclosures exist. The majority of fences that exist are however, due to livestock containment.

This EIS also states:

> "*Climate change may affect the availability of wild horse and burro forage or water resources as well as rangeland health; AMLs for herds were established based on past conditions, including vegetation and water resources. Should available forage or water resources be reduced due to a change in climate, current AMLs may no longer be appropriate, rangeland conditions may be impacted, and herd health impacted due to a lack of resources.*"

BLM is required to consider the impact on the current climate crisis[21] in all decisions made.

However, the above statement regarding changes in wild horse management due to the effects of climate change are in sharp contrast with management practices that ignore climate impacts causal to livestock production. Again, this shows the deep preference given to one use while using every possible excuse to eliminate another.

The livestock industry in the US has skewed statistics[22] to present a much rosier picture than what is reality regarding animal agriculture and the BLM is simply following suit and seemingly doing so to appease a few public lands ranchers while denying the wishes of the majority of the American public.

Mike Hudak's 2009 essay[23] is a good source that explains the data skewing while providing unbiased data.

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[21] **Executive Order 13990**: Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis; "EO 13990 highlights the need to use science to reduce greenhouse gas emissions, bolster resilience to the impacts of climate change, and prioritize environmental justice."
Executive Order 14008: Tackling the Climate Crisis at Home and Abroad; "*EO 14008 calls for quick action to build resilience against the impacts of climate change, bolster adaptation, and increase resilience across all operations, programs, assets, and mission responsibilities with a focus on the most pressing climate vulnerabilities.*"
Secretarial Order 3399 - Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process

[22] **Climate change dominated long-term soil carbon losses of Inner Mongolian grasslands**: Chen et al., 2018; Li & Wang, 2012; https://www.sciencedirect.com/science/article/pii/S0048969720383716
The impact of climate change on livestock production in pastoral areas of China; Xiaolong Feng et al.; https://www.sciencedirect.com/science/article/pii/S0048969720383716
Livestock Use on Public Lands in the Western USA Exacerbates Climate Change: Implications for Climate Change Mitigation and Adaptation. Environmental Management. Kauffman, John & Beschta, Robert & Lacy, Peter & Liverman, Marc. (2022). 69. 10.1007/s00267-022-01633-8.

[23] Mike Hudak, PhD; Claims That Livestock Grazing Enhances Soil Sequestration of Atmospheric Carbon are Outweighed by Methane Emissions from Enteric Fermentation: A Closer Look at Franzluebbers and Stuedemann (2009); https://www.mikehudak.com/Articles/FranzluebbersAndStuedemannCritique.pdf

The EIS pg. 3-30 and 3-31 states:

> "*Public lands are managed to achieve or make significant progress toward achieving Land Health Standards developed for an area unless specified otherwise in the Land Use Plan.*"

And it further states:

> *"In accordance with 43 CFR Part 4180, the BLM must take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines.*"

BLM has not been doing land health assessments[24] so a "determination" that an area is failing, progressing toward or meeting land health standards cannot be made.

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According to Public Employees for Environmental Responsibility (PEER)[25]: "*America's public rangelands suffer far more damage from overgrazing by commercial livestock than from wild horses and burros, according to the latest U.S. Bureau of Land Management (BLM) data analyzed by Public Employees for Environmental Responsibility (PEER). The damage estimates are based on BLM's own Land Health Standards, which measure the minimum water quality, vegetation, and soil conditions needed to support wildlife.*"

Peer also found that:

- *"America's public rangelands suffer far more damage from overgrazing by commercial livestock than from wild horses and burros, according to the latest U.S. Bureau of Land Management (BLM) data analyzed by Public Employees for Environmental Responsibility (PEER). The damage estimates are based on BLM's own Land Health Standards, which measure the minimum water quality, vegetation, and soil conditions needed to support wildlife.More than two-thirds of BLM acreage not meeting its own minimum Land Health Standards are due solely to livestock overgrazing, while less than 1% of those failing acres are due solely to wild horses;*
- *In the ten Western states under BLM's grazing program, only one (Nevada) has more than 1% of those failing acres where wild horses are even a factor; and*
- *Nationally, only 77 allotments (out of about 21,0000 allotments) are failing due in whole or part to wild horses."*

We know from the AZ Resource Advisory Council[26] on April 24, 2024 that BLM feels they no longer are required to do any land health assessments, except for riparian areas, during a

[24]Fact sheet Rangeland Health BLM Grazing, PEER May 2024: https://peer.org/factsheet-rangeland-health-blm-grazing-pdf/

[25] Range Damage from Cattle Far Exceeds Wild Horse Impacts; May 29, 2024; https://peer.org/range-damage-from-cattle-far-exceeds-wild-horse-impacts/

[26] AZ RAC meeting, April 24, 2024: https://youtu.be/t1BDXH0nEwU?si=oXN5Ix8M3-fUU7GH

grazing permit renewal. And we know most of the renewals are not even getting riparian area assessments. (Public Employees for Environmental Responsibility [PEER] Interview with NPR[27])

The interview revealed that BLM is using a loophole, which is a FLPMA rider (402c2), to bypass doing assessments. More than 60% of 245 million acres of public land managed by BLM is being managed through leased livestock grazing allotments in Oregon and 9 other Western states. 84% of the allotments in OR alone have not been assessed by using this loophole. 8 out of 10 allotments are failing BLM land health standards, yet no assessments are being done to monitor progress or lack thereof. According to PEER, livestock grazing (not wild horse presence) is the main reason why nearly 60 million acres of BLM rangeland fail the agency's own standards for land health, which are used to assess soil and water quality, among other factors.

The impacts of livestock on the environment compared to that of wild horse impacts should be considered when determining whether or not reduction or elimination of either species should be undertaken to improve or preserve GRSG habitats. (See Attachment 6)

The EIS at pg 4-186 states:

> *"Management actions that can affect climate change include actions that emit GHGs, and those that create, eliminate, or damage carbon sinks and sequestration on BLM-managed lands. These include mineral exploration, development, and production activities; livestock grazing, wild horses and burros, and wildlife; wildland fire; vegetation management; rangeland management; and infrastructure development.* ***Protection of GRSG habitat may move sources of GHGs to different locations.****"*

Moving *the location* of a source of GHGs, or a use that is causal to loss of carbon sequestration is not going to change the impact on the climate crisis. Overall, the climate changes which negatively impact sage grouse, such as drought or wildfire, are not going to be mitigated by moving these uses away from GRSG habitat. This statement is nonsensical and should be removed. (Additionally, wild horses cannot be moved to places they were not in 1971 pursuant to the WHBA.)

In the EIS on pg 4-186, 187 BLM states:

> "*Livestock Grazing Management Grazing, in addition to wild horses and burros and big game wildlife herds, can impact emission of GHGs and improper grazing can affect vegetation, soils, and water resources (****Beschta 2012; Ripple et al. 2014; Gerber et al. 2013****).*

Wild horses and burros cannot be lumped in with ruminants when comparing impacts like GHG emissions. As hind gut fermenterds (having a cecum) they emit far less GHGs than ruminants. (Attachment 6)

[27] Nearly 60 million acres of BLM land fail to meet agency's standards for land health; NPR Think Out Loud series, May 21, 2024; https://www.npr.org/podcasts/408524085/think-out-loud

There is no paper listed in the Literature Cited list in the EIS for Beschta 2012. There is only a paper from 2014. Here, Beschta focuses on livestock grazing as the major cause of the impact on vegetation, soils and water resources. Also the cause of increased fire. WHB were not specifically identified as a major cause.

J. Boone Kauffman 2022[28], co-authored by Beschta, stated:

> "*Removing livestock can increase soil carbon sequestration on lands that have been depleted in the past by poor management. Removing livestock is not only a viable, cost-effective natural climate solution; it also offers enhanced water quality, flood buffering, soil health, habitat diversity, and climate resilience (Beschta et al. 2012)*."

Beschta also says: "*Livestock Grazing is Not a Viable Tool for Reducing Fuels and Wildfire Effects*". This opposes opinions throughout this EIS where BLM states that reduction or complete removal of livestock could add to the potential for wildfire because the vegetation would not be consumed. Beschta further contradicts this opinion by stating:

> "*Livestock grazing in western US landscapes altered natural fire regimes by decreasing the frequency of low-severity fires beginning in the early 1900s (Swetnam and Betancourt 1998), making large areas prone to invasion by woody species and, in turn, more susceptible to high severity fires (Chambers and Pellant 2008).*"

We cannot provide comment on the other 2 references cited in the quote above from page 4-186, 187 of this EIS (Ripple and Gerber) because they were not provided in the literature list.

However the EIS goes on to state:

> *"Conversely, sustainable livestock grazing can have beneficial effects by reducing fuel loads, reduction in wildfire potential, and improving soil conditions and biological diversity. Grazing, under improved management,* ***can increase carbon sequestration potential of the soil and promote root production (Chen et al. 2015).*** *Further, as described in Section 2.9.7,* ***livestock grazing is managed to meet or make progress toward land health standards****, thus reducing the likelihood of adverse effects.*"

This statement is in opposition to the statements made by Beschta (above). Moreover, the Chen study cited did not have control plots. The outcomes that showed any positive carbon sequestration were only in that of soil content, not aboveground. The following limitation was found:

> "*Our results, in a temperate steppe environment, show that the aboveground biomass production was resilient to grazing up to a utilization rate of 50% (~5.5 SE/ha), but declined sharply with higher levels of utilization. The belowground production seems to be more sensitive than the aboveground production showing a continuous change with stocking rate (Fig. 3b). This may indicate that the root growth is critical to rapidly acquire nutrients to replace lost foliage under moderate grazing. Further regression analysis*

[28] Kauffman, J.B., Beschta, R.L., Lacy, P.M. *et al.* Livestock Use on Public Lands in the Western USA Exacerbates Climate Change: Implications for Climate Change Mitigation and Adaptation. *Environmental Management* 69, 1137–1152 (2022). https://doi.org/10.1007/s00267-022-01633-8

between carbon change and stocking rate showed that the optimal stocking rate for carbon sequestration is ~5SE/ha (Fig. 8a), which coincided with the stocking rate for the highest root production."

As stated above, BLM has not been doing any utilization monitoring of livestock allotments. So statements that attempt to claim livestock management is at a "sustainable" level relative to improving soil conditions or biological diversity are not supported by any monitoring data. And there is no utilization rate provided in allotments to show that the maximum stocking rate discussed in Chen to achieve any positive carbon impact exists. The last claim that livestock grazing is managed to meet or make progress toward land health standards is not supported by any reports or data, thus this statement should be removed from the EIS everywhere it is made.

This EIS at pg. 4-9: states:

*"Effects of wild horses on habitats **may** also be more pronounced during periods of drought or vegetation stress (**NTT 2011**). Methods used for wild horse and burro gathers **may** also disturb GRSG."*

The NTT 2011 report also states:

"Coordinate with other resources (Range, Wildlife, and Riparian) to conduct land health assessments to determine existing structure/condition/composition of vegetation within all BLM HMAs."

As stated many times herein, BLM is not doing land health assessments. In fact, a recent wild horse EA[29] admitted the last assessments for two HMAs were done in 2013. Both HMAs had livestock allotments covering nearly all HMA acres. This is an issue that we frequently address in our public comments, and we do not get responses from BLM. Therefore, the language in this EIS to remove, reduce, gather, etc. any wild horses because of GRSG population or habitat impacts should only be considered if there is a current land health assessment done that follows the guidelines and procedures in Technical Reference 1734-3. Additionally, the assessment must include a utilization report that provides data by species and does not lump livestock impacts in with wild horses or other grazing ungulates.

Here is a perfect example (from the EIS) of how BLM manages land based on biases of 2 public land uses (livestock grazing), and a natural resource (wild horses):

Pg. 4-24:

Removal of livestock: "*There would be the possibility of **increased wildfires without livestock to reduce fine fuels** on a large portion of the landscape"*

Also pg. 4-24:

Removal of wild horses: "*Removing wild horses and burros in PHMA **would increase total vegetation**, grass abundance and cover, sagebrush canopy cover, species richness, and dominance of palatable forbs*"

[29] n 9

Removal of one species (cows) is bad because they won't eat the forage, leaving another species (horses) is bad because they do eat that same forage.

If the goal is really to have fuels consumed, that aid in wildfire intensity or spread, then leaving horses who would also consume these same fuels should not be an issue. Alternatively, if the goal is to protect the forage within GRSG habitats then BLM needs to provide data that shows the current utilization of those plants which compares the number of livestock vs the number of horses on any given GRSG habitat area of concern. However, given these 2 statements are the general attitude of the BLM overall, we feel that the goal is not protection of, or consumption of forage, it is simply protection of one land use with exorbitantly high influence over the agency. Again, this is absolutely nonsensical, and would be actionable; this bias needs to stop.

These are other examples of bias where removing horses would benefit 'the sacred cow':

Pg 4-65:

> *"Prioritizing wild horse and burro gathers in herd management areas and HAs in priority GRSG habitat to meet established AMLs* ***would reduce any current levels of forage competition between wild horses and burro and livestock****."*

Pg 4-69:

> *"Management to adjust or reduce AMLs would enhance vegetation productivity and sustainable forage, particularly where rangeland conditions could be improved. Tiered prioritization of gathers in HMAs in SFA, followed by PHMA, GHMA, and IHMA to meet established AMLs* ***would reduce any current levels of forage competition between wild horses and burros and livestock on allotments in PHMA."***

Pg 4-119:

> ***"Improper livestock grazing*** *could impact ACEC values, depending on what the values are for each ACEC, by increasing the potential for soil erosion, increasing annual grasses, reducing perennial native vegetation, and affecting the plant communities that are the values for which the ACEC was designated. As another group of large grazing ungulates****, wild horses and burros, have the capability of overutilizing vegetation, causing degradation of soil and vegetative resources as described for livestock grazing****. Closing ACECs to livestock grazing*** *could help protect relevant and important values by eliminating soil and vegetation disturbance associated with livestock grazing; however, this* ***could*** *also* ***increase the risk for wildfire due to increased fuel loads****. Further, as described in Section 2.9.7,* ***livestock grazing is managed to meet or make progress toward land health standards****, thus reducing the likelihood of adverse effects."*

The above paragraph starts out discussing livestock impacts on ACEC's and finishes by making claims that if they are removed it might increase the potential for wildfire and finally claims that livestock are managed by evaluation of progress toward meeting land health standards. We have already provided evidence that this is not true due to the lack of completion of land health

studies. But, wild horses are thrown into the middle of this paragraph as if they somehow are part of this issue. Once again, BLM attempts to lump wild horses and their impacts, in with livestock to minimize the impacts of livestock themselves. That should be removed from this paragraph that is supposed to be analyzing the impact of "livestock" on ACECs.

While BLM put this plan out to protect GRSG it seems to be focused on protecting livestock when it comes to the discussions of wild horses. There is little attempt or evidence given that quantifies horse impacts on sage grouse, and where there is, it is most often a study or statement that combines horses with livestock like the following from the EIS (pg. 4-36):

> "***Wild horse and burro impacts are similar to those from livestock grazing****, as wild horses and burros also forage on and trample vegetation. However, wild horse and burro use is not authorized through the permitting process and is thus not managed in the same way as livestock grazing.*"

While we agree that obviously wild horses (as a natural resource) are not managed in the same manner as domestic livestock we feel this statement is unnecessary. This statement is often used to mislead the reader or insinuate that horses do more damage because they are not removed part of the year, or support the idea that horses are always permitted to freely roam while cows are always in fences (neither of which is normally true).

Wild horse impacts may be similar in some ways, but they are significantly different in other ways. Impact differences can be attributed to the different digestive systems, as horses have a cecum and other grazing (domestic and wild ungulates) animals do not. The hoof structure is different which impacts soil compaction and soil crust disturbance in different ways. (see Attachment 7) The increased size of a beef cow today would warrant 1.25 AUM's (Kauffman 2022[30]) which is not updated in current forage allocations. The sheer number of livestock versus horses on the land makes a difference in the overall impacts. And the benefits of wild horses on the land are not acknowledged at all.

Liz Koonce[31] states:

> "*Plant species richness and pollinator populations have been found to be higher in areas grazed by horses compared to ungrazed areas and can even mitigate the decline of pollinator-dependent plants. Horses have other interesting effects on the ecosystems they inhabit; by trampling certain vegetation and wallowing near water mustangs can create microhabitats and redistribute nutrients through seed dispersal[7]. Their feces, in addition to spreading seeds, builds the humus layer of soils and increases soil's absorption of water, lowering wildfire risk. These characteristics are unique to horse feces compared with ruminants such as cattle, sheep, goats, or deer.*"

[30] n 14

[31] The Grass Remembers the Horses, Liz Koonce; https://medium.com/@lizkoonce/the-grass-remembers-the-horses-cf380b7e07d9

The EIS also states the following on pg 4-198:

> *"The land uses most commonly associated with stream degradation in the planning area is improper livestock grazing and excessive use by wild horses and burros because it is most prevalent, compared with other land use disturbances. Livestock, wild horses, and burros often use the same riparian and wetland areas for water and shade and may* ***congregate around water developments.*** *This can result in compacted soil, decreased water quality due to* ***fecal coliform introductions, trampled*** *and consumed nearby vegetation, and* ***reduced*** *riparian community conditions and* ***hydrologic functionality*** *(****Weltz et al. 2017****)."*

In reading this Handbook (Weltz et all 2017) we found no reference to any animal, fecal coliform or trampling. However, well-known hydrologist Wayne Elmore, said in Lynn Jacobs' 1991 Waste of the West - Public Lands Ranching, that "*Many people have never seen a healthy rangeland riparian area, since degradation was widespread before many of us were born.*" In this same publication, noted riparian specialist, Harold Winegar, is quoted: "...*Usable water could be increased by about 190,000 acre feet on Oregon's Ochoco National Forest simply by removing cattle for 10 years" and "... that with only 5 years of no grazing on the Ochoco, fishery production could be expected to increase 150%*".

Additionally, we point out that BLM is once again lumping wild horses in with domestic livestock for the purposes of claiming negative impacts on riparian areas. However, horses spend significantly less time at water sources than do cattle. The following references discuss the distance horses travel to water sources and provide proof that damage done to riparian areas when compared to that of cattle is negligible. (Hampson[32] 2010, Miller[33] 1983, and Ganskopp[34] 2000)

Hampson found:
"Average distance travelled was 15.9 ± 1.9 km/day (range 8.1-28.3 km/day). Horses were recorded up to 55 km from their watering points and some horses walked for 12 h to water from feeding grounds. Mean watering frequency was 2.67 days (range 1-4 days).Feral horses are able to travel long distances and withstand long periods without water, allowing them to survive in semi-arid conditions."

Miller observed:
"*The presence of horses at waterholes did not prevent either sage grouse (Centrocercus urophasianas) or coyotes (Canis latrans) from drinking.*"

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[32] Distances travelled by feral horses in 'outback' Australiaevj_203 582..586; B. A. Hampson*, M. A. De Laat, P. C. Mills and C. C. Pollitt; Equine Veterinary Journal Equine vet. J.(2010) 42 (Suppl. 38) 582-586 doi: 10.1111/j.2042-3306.2010.00203.x

[33] Habitat Use of Feral Horses and Cattle in Wyoming's Red Desert Author(s): Richard Miller; Journal of Range Management, Vol. 36, No. 2 (Mar., 1983), pp. 195-199; Society for Range Management; http://www.jstor.org/stable/3898161

[34] Ganskopp, D., & Vavra, M. (1986). Habitat use by federal horses in the Northern sagebrush steppe. Journal of Range Management, 39(3), 207-212

Ganskopp showed:
"Home ranges averaged 12 km with the minimum convex polygon procedure and 27 km2 with the 90% confidence ellipse method."*

"The hypothesis that horses watered at random periods throughout the day was rejected (PCO.01). Horses preferred to drink during the first and last periods of daylight. Forty-six percent of the daylight watering events occurred during the first period of the day, and 33% occurred during the last period...Watering events averaged 16.1 minutes in duration, with a range of 1 to 45 minutes. Typically groups of horses moved rapidly to and from water with very few feeding or loafing activities occurring in the immediate vicinity of the drinking areas."

Then the EIS on pg. 4-50 states:

> "*Wild horses and burros may alter habitat conditions for fish and wildlife species, including reduced total vegetation and grass abundance and cover, lowered sagebrush canopy cover, increased shrub canopy fragmentation, lowered species richness, increased compaction in surface soil horizons, and increased dominance of unpalatable forbs (Manier et al. 2013). Wild horses and burros also have direct impacts on wildlife and compete for forage and water as they have been documented aggressively defending water sources from native ungulates (Perry et al. 2015).*"

BLM is attempting to cherry pick statements from different scientific studies. BLM frequently uses Kaweck, which we have disagreed with, however the Kaweck 2018[35] paper does state:

> "*Our analysis did not show any evidence that use of riparian areas by one species of animal caused other species to avoid the area. In fact, there was a slightly positive relationship between horses and wildlife (ρ = 0.24, P b 0.01) and between horses and cattle (ρ = 0.25, P b 0.01).*"

Furthermore, studies done from the Kalahari (Boyers et al.[36]) and the Arabian Desert (Hetem et al., 2012a[37]) found that many herbivores are adjusting the time of day they use water sources due to climate change and increased temperatures.

The other important note on water source use between species is the acknowledgement that species, especially prey species will alter their use patterns. Amoroso[38] found that:

> "*Animals that depend on water sources in dry environments must balance their water demands with predation risk. In settings of water scarcity, predators may strategically exploit prey's dependence on water; prey may adjust their use of water sources either spatially or temporally to avoid overlapping with predators."*

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[35] Impacts of Wild Horses, Cattle, and Wildlife on Riparian Areas in Idaho; Kaweck, M.M., Severson, J.P., Launchbaugh, K.L.; April 2018; Rangelands 40(2); DOI:10.1016/j.rala.2018.03.001

[36] Melinda Boyers, Francesca Parrini, Norman Owen-Smith, Barend F N Erasmus, Robyn S Hetem; How free-ranging ungulates with differing water dependencies cope with seasonal variation in temperature and aridity, Conservation Physiology, Volume 7, Issue 1, 2019, coz064, https://doi.org/10.1093/conphys/coz064

[37] Robyn S Hetem, Andrea Fuller, Shane K Maloney & Duncan Mitchell (2014); Responses of large mammals to climate change, Temperature, 1:2, 115-127, DOI: 10.4161/temp.29651

[38] Amoroso, Caroline & Kappeler, Peter & Fichtel, Claudia & Nunn, Charles. (2020). Temporal patterns of waterhole use as a predator avoidance strategy. Journal of Mammalogy. 101. 574–581. 10.1093/jmammal/gyaa020

BLM has not looked at how behavior at water sources might be dependent on predator presence. Sage Grouse are known to hang out with horses, as are other prey species. Wild horses, as an extremely sensitive, flight (prey) species are often the alert system for other prey species. Sage grouse in particular will use the wild horses as protection from smaller predators like coyotes. Coyotes do not often try to attack sage grouse in the middle of a band of wild horses. They weigh the possibility of being injured by a horse against the possible benefit of a sage grouse meal. Most often the coyote will avoid attempting to hunt in that situation. So, wild horse presence, including at a water source, benefits sage grouse.

The following statement in the EIS (pg 4-199) is provided with no scientific proof:

> *"Changing grazing patterns and maintaining wild horses and burros at AMLs in riparian areas can mitigate negative impacts and further benefit the water quality by promoting vegetation health, stabilizing streambanks, and enhancing nutrient cycling, along with the geomorphic function of streams."*

BLM does not use the Hennig[39] study. Hennig looked at utilization by horses utilizing radio collared mares, and counting fecal piles. Hennig found:

> "*Specifically, we show that greater intensity of feral horse use may negatively influence soil health and undesirably alter herbaceous structure in xeric shrubland systems. Contrary to our predictions though,* ***we found no support for horse use in explaining variation of other sage-grouse habitat quality metrics. Our study was strictly correlative and therefore we cannot infer causation…"***

However, Hennig then finds that herbaceous structure alterations causal to horses was not significant:

> **"*We did not find significant relationships between horse use and shrub cover, shrub fragmentation, shrub height, visual obstruction, and native perennial or cheatgrass cover.***"

While the BLM cites studies that show damage to riparian areas, all of them include livestock use in the areas as well. There needs to be utilization studies that can express the level of damage or utilization by species, otherwise it's mere fallacy. Additionally, there has never been a single study, that we have been made aware of, that shows that removal of horses, or reduction of population improves any riparian habitat. Thus, this statement in the EIS is not supported by factual evidence.

The EIS also states on pg. 4-24:

> *"Likewise, avian predators may be reduced if range improvements, including artificial water sources and fences, are also removed (Stevens et al. 2012; Manier et al. 2013, Coates et al. 2016).* ***However, if livestock are removed on BLM fences may be***

[39] Hennig, Jacob; Beck, Jeffrey; Duchardt, Courtney; Scasta, J Derek; Variation in sage-grouse habitat quality metrics across a gradient of feral horse use; Version of Record 31 May 2021; https://doi.org/10.1016/j.jaridenv.2021.104550

erected to fence out BLM lands from adjacent private grazing lands. Additional fencing may also be needed to keep wild horses off BLM-administered PHMA. If fencing increases in areas of mixed ownership, there would be increased potential for impacts such as injury or mortality from fence strikes and predation."

The BLM does not analyze how many miles of fence would be removed on BLM public lands, versus how many would be constructed on private lands. Given the sheer amount of fencing on public lands, we believe the difference would show a significant decrease in total fencing if they were removed from public lands. Again, according to the 92nd Senate Congressional Committee Report 92-242 it was not the intent of Congress to have horses managed in "zoo like" areas, so there should not be fences constructed to keep horses from any areas on their federally designated lands. Again, there has been no study that provides evidence that wild horses do any damage to GRSG habitats. Furthermore, in discussing fencing as perches for predators, BLM has not analyzed the impacts to protected raptors, i.e. bald or golden eagles, and various hawk and owl species, etc.

Most importantly, we point out that the BLM's Greater Sage-Grouse Plan Implementation Rangewide Monitoring Report for 2015–2020[40] mentioned horses ONE time in the 582 page report, on page 503. They were found to be a causal factor in one year in one area. The rest of the report finds that the major causes for GRSG population and habitat decline were due to fire, oil, gas and livestock. We believe that this should warrant removal of wild horses from any GRSG plan as this affirms all of what we have stated throughout. It validates our scientific proof, and our statements that there is no finding that wild horses (without the presence of, or being combined with livestock) would have any impact on GRSG populations.

According to the World Wildlife Fund[41]: "*Greater sage-grouse were once found across 13 western U.S. states and 3 Canadian provinces. Unfortunately, because of oil and gas development, conversion of land for agricultural use, climate change and human development, sage-grouse only inhabit half their historic range.*"

As wild horse advocates we find the constant statements by BLM, that our advocacy for wild horses is related to "*symbolism*" or "*emotional connection*", are offensive and incorrect. Such as the following statement in the EIS on pg. 3-50:

> *"Wild horses are often termed "living symbols of the historic and pioneer spirit of the West." (16 U.S.C. §1331). As such, some stakeholders place a social value on horses related to this* ***symbolism****. Wild horses may also hold value for some due to an* ***emotional connection*** *related to the long history of human-horse interactions throughout civilization (Scasta et al. 2018)"*

And pg. 4-136:

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[40] Herren, V., E. Kachergis, A. Titolo, K. Mayne, S. Glazer, K. Lambert, B. Newman, and B. Franey. 2021. Greater sage-grouse plan implementation: Rangewide monitoring report for 2015–2020. U.S. Department of the Interior, Bureau of Land Management, Denver, CO.

[41] World Wildlife Fund; Sage Grouse Factsheet; https://www.worldwildlife.org/species/greater-sage-grouse

> *"Wild Horse and Burro Management As discussed in Chapter 3,* ***some stakeholders value the existence of wild horses due to their symbolism in of the American west and value the opportunity to view wild horse and burros on the range****."*

While, as humans who are not sociopaths, we do have emotions and value the cultural and historic value of our wild horses. However, our reason at OWHO for advocacy of wild horses is because species diversity is crucial for ecosystem health, and if a species disappears, an entire ecosystem can start to unravel. Biodiversity is essential for the processes that support all life on Earth, including humans. Without a wide range of animals, plants and microorganisms, we cannot have the healthy ecosystems that we rely on to provide us with the air we breathe and the food we eat. And people also value nature itself.

Protecting and conserving different species is crucial for several reasons. First, each species plays a unique role in its ecosystem, contributing to the overall balance and health of the environment. Loss of any species can disrupt this balance, leading to unpredictable and potentially harmful consequences. Second, biodiversity, the variety of life on Earth, provides various ecosystem services essential for human survival, such as clean air, water, pollination of crops, and disease regulation. Preserving different species ensures the continuation of these services, which are vital for human well-being. Genetic diversity within a species is equally important. It allows populations to adapt to changing environments and challenges, such as diseases and climate change. Genetic diversity provides the raw material for natural selection, enabling species to evolve and survive over time. Biodiversity is essential for the functioning of ecosystems, the well-being of human societies, and the overall health of our planet. Its preservation is critical for current and future generations to enjoy a stable and sustainable environment.

This is also a belief that is a cornerstone of the American Museum of Natural History[42]:

> *" We use the term "biocultural" to describe the dynamic, continually evolving and interconnected nature of people and place, and the notion that social and biological dimensions are interrelated. This concept recognizes that human use, knowledge, and beliefs influence, and in turn are influenced, by the ecological systems of which human communities are a part. This relationship makes all of biodiversity, including the species, land and seascapes, and the cultural links to the places where we live—be right where we are or in distant lands—important to our wellbeing as they all play a role in maintaining a diverse and healthy planet."*

We understand that these statements were made in an attempt to analyze the socioeconomic impacts, however the above 2 statements (from EIS pgs. 3-50 and 4-136) should be removed. This EIS did not analyze those impacts of species diversity when discussing removal of wild horses. Therefore, the analysis of socioeconomic impacts should be focused only on the sections that follow in the EIS, which include tourism, aesthetic enjoyment of studying, observing and photographing the wild horses.

[42] American Museum of Natural History; What Is Biodiversity?; https://www.amnh.org/research/center-for-biodiversity-conservation/what-is-biodiversity

In considering these other socioeconomic impacts, we address the following statement in this EIS (pg. 4-136):

> *"Concerns over increasing wild horse and burro populations and program costs have prompted discussions, studies, and proposals. The BLM uses wild horse and burro funding for a variety of activities, including offrange holding activities, gathers, and other activities. For fiscal year 2021, expenditures totaled an estimated $122.2 million (**CRS 2022**)."*

If the BLM would stop doing repetitive studies, expensive helicopter gathers, and removals (resulting in warehousing costs of removed animals) there would be a serious drop in financial expenditures. There are many studies like the Coates 2021 and Munoz 2021 papers which were both funded by BLM, produced the same year, contained the same information (which was mostly reviews of previously paid for studies). Research that doesn't get completed like the Baker study on GonaCon where Baker wanted to finish studying mares that had not returned to fertility to see if they ever would (which BLM declined to extend funding for thus leaving that question unanswered and the public feeling the research was incomplete). All of this is taxpayer funded and often the results are not provided to the public (an issue we frequently address in litigation, which also adds to financial expenditures of BLM regarding wild horse management).

Helicopter contractors for wild horse gathers are not contracts that are issued for competitive bids, rather BLM uses the same companies over and over, and they receive exorbitant pay for their services. Helicopter costs should be analyzed comparing costs of doing bait/water trapping.

On-range management is never utilized. Thus far BLM wild horse management is done only by gather and removals. On-range fertility control has not produced a lack of gather and removals because it was underutilized and the cost of those programs were less than 1% of the overall wild horse and burro budget. That seems to be changing now with the discovery that BLM can apply GonaCon and sterilize the horses, this has caused a budgetary ask for increased monies from Congress to sterilize horses.

See Appendix 13, Socioeconomic Baseline Report needs adjusted due to errors we have pointed out herein that are just repeated in Appendix 13. Some of those include that statement that FLPMA amended the WHBA, the acreage wild horses are managed on, etc. There was zero new information, in Appendix 13 section 3.6, that was not stated in the EIS itself, but the errors were repeated.

The EIS on pg 4-207:
"*Livestock Grazing and Wild Horse and Burro Management*" once again lumps cattle and wild horses together, "***Cultural resources can be adversely impacted by livestock grazing and wild horses*****.** There are significantly more livestock on the land than horses. The weight differences would provide different impacts. The location of artifacts, the type of artifact and other variables would also make a difference.

The EIS goes on to state:

> "*Experimental studies have shown that trampling significantly impacts both the physical artifacts and features of a site. It also distorts the most common analytical approaches to measuring sites, such as artifact abundance, raw material proportions, and average artifact dimensions (**Osborn et al. 1987; Douglass and Wandsnider 2012**). Trampling also causes the vertical displacement of artifacts, especially in wet ground (**Eren et al. 2010**). **Making land unavailable for livestock grazing and removal of wild horses or burros would be protective of cultural resources.***"

Osborn 1987 did not assign any blame to wild horses. Osborn's paper only referenced horses owned by humans, not wild horses. The only damage he mentioned was attributed to cows, and then he stated that horse dung was observed at a different archaeological site:

> *"The original site form for 42GA458 noted that **cows may have knocked over the upright slabs of a cist**. Scattered cow and horse dung covered the floor of 42GA459."*

Douglass and Wandsnider did not mention horses at all in their paper. The word "horse" never appears in the paper.

Eren et al. 2010 also did not mention horses at all, cows were mentioned twice, elephants twice, and humans several times. Additionally, the climate and land are not comparable. Western arid lands and the Southern India Jurreru Valley differ significantly in terms of climate, topography, and vegetation. Western arid lands, such as those in the western United States, are characterized by low precipitation, high temperatures, and sparse vegetation. These areas often consist of deserts, arid plains, and rocky terrain. In contrast, the Jurreru Valley in Southern India experiences a tropical climate with high levels of rainfall, resulting in lush greenery, dense forests, and fertile land for agriculture. The topography of the Jurreru Valley is defined by its rivers and fertile plains, in contrast to the arid and rocky landscapes of western arid lands.

In the western arid lands, where the ground is typically dry and hard due to low precipitation, the trampling of archaeological artifacts may result in minimal impact on the artifacts themselves. The arid conditions can contribute to the preservation of artifacts by reducing the likelihood of rapid decay and erosion caused by moisture. In contrast, the lush and fertile environment of the Jurreru Valley in Southern India may present a higher risk to archaeological artifacts due to the softer and more moisture-laden ground. The increased moisture levels and organic matter in the soil can lead to greater susceptibility to damage from trampling and environmental degradation. Therefore, the differences in climate and terrain between these two regions can significantly affect the preservation and vulnerability of archaeological artifacts to trampling.

Therefore the statement on page 4-207 referenced above from the EIS should be amended to read "Cultural resources can be adversely impacted by livestock grazing".

Similarly the statement on pg. 4-208 offers no proof where again wild horses are combined with livestock:

> *"The loss of vegetation, such as grass, forbs, and shrubs over-consumed by* ***improperly managed livestock, wild horses, or burros*** *<u>can</u> result in increased erosion (Section 4.14.2, Soil, Nature and Type of Effects), <u>potentially</u> impacting the integrity of cultural resources. Erosion and the loss of vegetation due to improper grazing could also result in impacts to the setting of cultural resources.* ***However, as described in Section 2.9.7, livestock grazing is managed to meet or make progress toward land health standards, thus reducing the likelihood of these effects."***

The additiion of the last sentence gives the appearance that because livestock are managed… the impacts would be caused mostly by wild horses/burros, which never should have been added to this statement in the first place. Again, BLM is showing a bias.

This statement in the EIS on pg 4-215 as we have pointed out is not supported by any factual evidence provided in this EIS and should be amended or removed:

> *"Wild Horse and Burro Management Impacts from wild horse and burro management under Alternative 5 would be similar to those described for Alternative 1.* ***Management to the low end of the AMLs <u>could</u> reduce impacts from wild horses and burros on cultural resources in some areas."***

The last issue we are providing comment on is perhaps the most egregious in the EIS. OWHO has several members who are indigenous, including board president Theresa Barbour. We have asked other indigenous members their thoughts on the following statements:

"4.17 TRIBAL INTERESTS
4.17.1 Nature and Types of Effects
Livestock grazing and wild horse and burros may also alter the landscape in ways that decrease tribal opportunities to maintain specific traditional practices and values.

Pg 4-218:
Livestock Grazing and Wild Horse and Burro Management
Management of livestock grazing and wild horses and burros in PHMA and GHMA could decrease tribal opportunities to maintain specific traditional practices and values such as observing lekking behavior if those current management practices have led to decreases in GRSG populations."

One member of the Blackfoot, Cree, and All of the Wild Horse Nation, Roxanne Talltree Douglas stated:

> *"First of all unless you're native you can't speak for native people so, unless a native person said this and they were speaking for other native people they have NO business assuming anything even remotely related to this. Wild horses and burros are PART of the landscape, the earth. They stamp blessing on the earth with their hooves and spread seeds, life and freedom everywhere each hoof falls. They DO NOT decrease anything. Rather, they increase everything sacred just by being on the earth thereby improving opportunities for traditional practices and values."*

The attitudes of US indigenous peoples toward horses and sage grouse differ significantly. Horses hold a deep cultural and historical significance for many indigenous communities, representing freedom, strength, and connection to the land. They have been used for transportation, hunting, and ceremonial purposes for centuries. As such, many indigenous peoples hold horses in high esteem and consider them to be important spiritual and cultural symbols.

On the other hand, sage grouse are an essential part of the ecosystems in the American West, and many indigenous communities view them as an important indicator of environmental health. The presence of healthy sage grouse populations signifies the balance and vitality of the natural world, and their decline can signal ecological disruption. As a result, indigenous peoples often advocate for the protection and conservation of sage grouse as a means of preserving the overall well-being of the land.

In summary, while horses are deeply ingrained in the cultural and historical fabric of many indigenous communities, sage grouse are valued for their role in maintaining the ecological balance of the natural environment.

Indigenous peoples in the US generally attribute the decline in sage grouse populations to unregulated livestock grazing leading to overgrazing of rangelands. The resulting habitat degradation, alterations in vegetation structure, and soil erosion are seen as detrimental to the sagebrush ecosystem and the habitat of sage grouse. While acknowledging potential variations in perspectives among diverse indigenous communities, there is a prevalent emphasis on advocating for sustainable land management practices and initiatives to mitigate the impacts of livestock grazing on sagebrush ecosystems as crucial measures for conserving sage grouse populations.

In contrast, wild horses are not typically singled out by indigenous peoples as the primary cause of the decline in sage grouse populations. The focus remains on broader issues such as habitat loss, degradation, and the impacts of human development activities on the sagebrush ecosystem. While wild horses may have an impact on certain landscapes, they are not commonly blamed by indigenous communities for the decline in sage grouse populations.

Indigenous tribal members support wild horses on public lands. The EIS states the normal process was followed of government-government consultation on this proposed amendment. Unlike Americans getting to provide input on a government plan tribal members do not get afforded such a process when their governments respond to plans such as this. OWHO, earlier this year responded to a situation where Nevada Wildlife commissioners decided to add their name to a letter urging BLM Director Stone-Manning to remove 75% of the wild horses and burros in the state of NV. We collected signatures for only 10 days and collected signatures of members from 45 tribes in US boundaries and 3 outside. The letter encouraged the Director to remove livestock instead of wild horses. (See Attachment 8)

At this time, we cannot support any alternative, to amend the GRSG plan, in this EIS. Every alternative presented would have an impact to wild horses. The least impactful of which is alternative 1. However, because we advocate for AMLs to be evaluated and set using scientific data as opposed to the current AMLs which were set for administrative convenience. Until these AMLs are adjusted to follow recommendations made by the NAS we do not support managing wild horses at current AMLs. That could further impact the genetic diversity of the herds, which are already showing significant negative impacts. This EIS combines impacts of the wild horses and burros in almost every instance where negative impacts are assigned to livestock, and we have shown that these are not accurate and in some instances are false, some may even constitute fraud. This EIS gave no alternative that does not impact wild horses and that should have been analyzed as well (similar to a “no action” alternative) which is required pursuant to NEPA.

These comments are respectfully submitted this 13th day of June 2024 by:

Oregon Wild Horse Organization
PO Box 115
Drain, Oregon 97435

And the following organizations and individuals:

Andean Tapir Fund
Wild Horse and Burro Fund
Craig C. Downer
Janelle Ghiorso
Theresa J Barbour

List of Attachments

Attachment 1 - Relabeling of Acreage
Attachment 2 - Gus Warr Conversation Affidavit
Attachment 3 - Wild Horses are Native North American Wildlife
Attachment 4 - Rebuttal to Hall
Attachment 5 - Wild Horses and Wildlife Coexist
Attachment 6 - Climate Impacts
Attachment 7 - Horses vs Cattle, Land Damage, a Comparison
Attachment 8 - Director Stone-Manning Letter

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June 13, 2024

SUBMITTED VIA ePLANNING

Sharif Branham
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United States Department of the Interior,
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Re: Sweetwater Royalties' Comments on the Bureau of Land Management's Greater Sage-Grouse Draft Resource Management Plan and Environmental Impact Statement

Dear Assistant Director Branham:

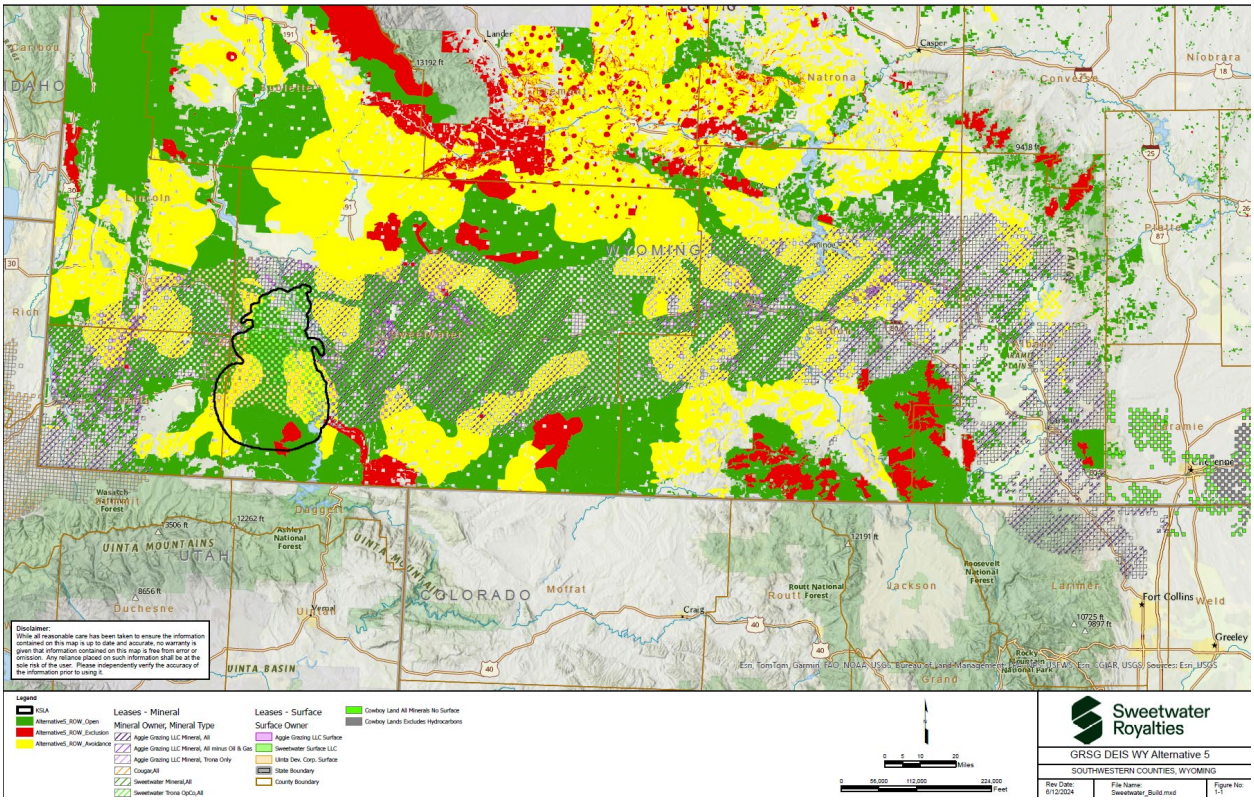
Thank you for the opportunity to comment on the Bureau of Land Management's ("BLM") Greater Sage-Grouse ("GRSG") Draft Resource Management Plan Amendment ("RMP") and Draft Environmental Impact Statement ("EIS"). Sweetwater Royalties appreciates that BLM has invested a tremendous amount of time and resources to prepare the Draft RMP and EIS, which considers amending 77 BLM RMPs to adjust management of up to 69 million acres of sage-grouse habitats in portions of California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, Utah, and Wyoming.

Sweetwater Royalties is the largest private landowner in the State of Wyoming with approximately 860,000 acres of surface ownership and approximately 3.8 million acres of mineral holdings. As such, Sweetwater Royalties is concerned with, and submits these comments to address, BLM's proposed amendments to the RMPs governing the management of sage-grouse habitats in Wyoming.

Among BLM's evaluated alternatives in the Draft EIS, Sweetwater Royalties notes that the BLM's preferred Alternative 5 has the least impact on our rights as a landowner, allows for multiple uses of public lands and correctly defers to state-specific conservation plans that protect sage-grouse habitat. Nonetheless, as detailed below in Section II., we request that BLM make certain changes to Alternative 5. In addition, as discussed in Section III., Sweetwater Royalties has major concerns with, and objects to, BLM's proposed Alternatives 3, 4, and 6 because of their severe restrictions on development, access, and economic uses of both public lands and Sweetwater Royalties' private surface and mineral estates that are checkerboarded with, intertwined with, adjacent to, and/or separated by, BLM's checkerboard public lands. We request that BLM consider these comments before issuing the final RMP Amendment and EIS.

I. Sweetwater Royalties' Interests in Wyoming

Sweetwater Royalties acquired its interests in Wyoming for $1.3 billion in 2020, and its surface and mineral estates are comprised entirely of checkerboard parcels that were granted to the Union Pacific Railroad in 1862 (commonly referred to as "the Land Grant" or the "checkerboard"). The below map (and included as an attachment to this submission) shows Sweetwater Royalties' surface and mineral estates (held by Aggie Grazing LLC, Sweetwater Surface LLC, Sweetwater Trona OpCo LLC and Uinta Dev. Corp.) overlain by BLM's preferred Alternative 5 for rights-of-way ("ROWs") management.



Our private surface and mineral estates span the areas managed by BLM's Kemmerer, Rock Springs, and Rawlins Field Offices, as well as the Known Sodium Leasing Area ("KSLA"). Sweetwater Royalties has the potential to develop new trona and lithium mines, renewable energy projects, carbon capture and sequestration projects, infrastructure, and other projects on its private lands in the Wyoming checkerboard area. And, in some instances, the potential projects may expand to federal lands or necessitate the development of federal minerals. Numerous projects are already in various stages of development.

II. Comments on BLM's Preferred Alternative 5

Sweetwater Royalties notes the BLM's selection of Alternative 5 as the agency's preferred alternative represents a balanced approach to managing multiple uses of public

lands, while still prioritizing sage-grouse and habitat conservation. As BLM explains, Alternative 5 will allow the agency to consider reasonable and different management strategies across the planning areas, while still advancing GRSG conservation. Draft EIS at ES-5. Alternative 5 also imposes fewer restrictions on resources and provides more opportunities for considering compensatory mitigation to offset impacts to sage-grouse and their habitat. *Id.* There are additional flexibilities associated with granting exceptions to fluid mineral stipulations and the disturbance cap. *Id.* Moreover, for wind, solar, and major rights-of-way ("ROWs"), Alternative 5 has less direct avoidance requirements and provides more opportunities for considering compensatory mitigation to offset impacts on GRSG and its habitat. *Id.*

A. Alternative 5 Aligns with BLM's Duty to Manage Public Lands for Multiple Uses

The Federal Land Policy and Management Act ("FLPMA") requires that public lands be managed on the basis of multiple use and sustained yield. 43 U.S.C. § 1701(a)(7). FLPMA defines "multiple use" as "the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people." *Id*. § 1702(c). It "include[s], but [is] not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values." *Id.* By authorizing development of public lands for oil and gas development, new trona or lithium mines, renewable energy projects, carbon capture and sequestration projects, infrastructure, and other projects, while also managing the land for GRSG habitat conservation, Alternative 5 achieves FLPMA's multiple use and sustained yield goals.

BLM explains that under Alternative 5 it will: manage PHMA as ROW avoidance areas for major ROWs and utility scale wind and solar; manage General Habitat Management Areas ("GHMA") as open to ROWs subject to mitigation measures for both major ROWs and utility scale projects; and keep designated corridors open to ROW development without any mitigation requirements. Draft EIS at 4-80. We note the flexibility that Alternative 5 affords BLM when necessary; it allows BLM to potentially approve projects that exceed disturbance caps if certain criteria are met, *id.* at 2-34–2-39, and it allows BLM to waive or modify oil and gas lease stipulations such as no-surface-occupancy stipulations if specific criteria are met. *See id*. at 2-49. These flexibilities are important for local field offices, particularly in Wyoming where federal lands are checkerboarded with private and state lands, and projects often span land ownership types.

B. Alternative 5 Appropriately Defers to State Conservation Plans

Sweetwater Royalties also appreciates that BLM selected Alternative 5 as its preferred alternative after BLM's cooperation and coordination with state governments and agencies, including the State of Wyoming and its wildlife management agencies. *Id.*; *see also id.* at I-12–I-13 (acknowledging that Wyoming opposed Alternative 4 as inconsistent with the Wyoming Governor's GRSG executive order and preferred Alternatives 5, as well as Alternative 2, as most aligned with the state's fluid mineral leasing and development objectives).

Alternative 5 calls for managing sage-grouse habitats "in coordination and cooperation with state wildlife agencies," and defers largely to state-specific plans. *Id.* at 2-10. Sweetwater Royalties notes BLM's decision to defer to state agencies given the primary role of the states in wildlife management. *See Defenders of Wildlife v. Andrus*, 627 F.2d 1238, 1248 (D.C. Cir. 1980) (explaining that, in enacting FLPMA, Congress "carefully and explicitly" "assigned the states the primary responsibility of management of wildlife programs within their boundaries."). We support BLM's consideration of Wyoming's Stewardship Habitat Management Areas ("SHMAs"), which are large swaths of private land, existing disturbance and prior and existing rights, and fragmented landscapes that continue to support substantial populations of greater sage-grouse. *See id.* at 2-189, 2-190–191; *see also* BLM's "WY GRSG DEIS Poster SHMA and SHMA Key Points_508.pdf." However, BLM should evaluate and discuss in more detail Wyoming's Executive Order 2019-3, as well as predecessor executive orders, which together establish Core Population Areas, Connectivity Areas, and Winter Concentration Areas that prioritize maintenance and enhancement of GRSG habitats and populations. *See* Draft EIS at I-12 (briefly mentioning Wyoming's executive order). Wyoming's efforts to protect sage- grouse and their habitat have been robust and successful. BLM should build upon those efforts and work with the State, rather than try to fix a problem that does not exist.

C. Sweetwater Royalties Requests Certain Modifications to Alternative 5

Sweetwater Royalties notes that the BLM's preferred Alternative 5 could be improved with the following changes:

- Provide clarification on when BLM may grant project-specific exceptions, waivers, and modifications. Such exceptions, waivers, and modifications are a critical tool for BLM to use when considering site-specific conditions for all types of projects and development, and particularly when necessary to uphold valid existing rights, like the property and mineral rights held by Sweetwater Royalties. As discussed above, the flexibility for BLM to grant exceptions to the disturbance caps or waive no-surface-occupancy stipulations, for example, have been identified for fluid mineral activities, *see, e.g.,* Draft EIS at 2-34–2-39, 2-49, but it is unclear what BLM's approach is for exceptions, waivers, and modifications for renewable energy, transmission and distribution lines, infrastructure, carbon sequestration projects, other minerals development, and other major project types. Sweetwater Royalties requests that BLM clarify its approach to exceptions, waivers, and modifications for all project types. In doing so, BLM should also consider adding a clear mechanism for granting exceptions, waivers, or modifications to ROW avoidance or exclusion areas for all project types, particularly in the checkerboard. Flexible management approaches are important for various projects, not just fluid mineral development.

- Abandon the Targeted Annual Warning System ("TAWS") in favor of a more reliable system before implementing adaptive management techniques. BLM proposes to use adaptive management techniques in Alternatives 3, 4, 5 and 6 to identify when potential management changes are needed to meet GRSG conservation objectives. *See id.* at 2-

120. BLM proposes to use TAWS for identification of irregularities in sage-grouse habitat. *Id.* If such irregularities or "triggers" are identified, then BLM can halt development to identify the cause of the trigger, potentially leading to significantly delayed projects. *See id.* at 2-122–2-128. The problem, however, is that TAWS has been criticized, including by the State of Wyoming, as flawed and unreliable—leading to false triggers/false alarms. Before BLM moves forward with an adaptive management approach that has the potential to halt already-underway projects, it must be sure that its system is reliable and will not produce false alarms.

III. Comments Opposing BLM's Anti-Development Alternatives—Alternatives 3, 4, and 6

Like the State of Wyoming, Sweetwater Royalties opposes BLM's proposed alternatives that unnecessarily restrict development within the state, particularly when state-specific and a more balanced approach to conservation can meet GRSG conservation goals. The anti-development alternatives—particularly Alternatives 3, 4, and 6—should be rejected as (a) inconsistent with BLM's duty to manage public lands for multiple uses and sustained yield, (b) interfering with valid existing rights, (c) exceeding BLM's authority for designating ACECs, and (d) harmful to the State of Wyoming and local communities.

A. BLM's Anti-Development Alternatives Violate FLPMA's Multiple Use Mandate

As discussed above, FLPMA requires BLM to manage public lands on the basis of multiple use and sustained yield. 43 U.S.C. § 1701(a)(7). This means that BLM must "maximize resource values for the public through a rational, consistently applied set of regulations and procedures which promote the concept of multiple use management." 43 C.F.R. § 1601.0-2. Congress specifically contemplated mineral leasing and development as one of the multiple uses for public lands. 43 U.S.C. § 1702(c). And, importantly, when creating a management plan, BLM is required to consider "the impact on local economies and uses of adjacent or nearby non-Federal lands[.]" 43 C.F.R. § 1601.0-8.

Here, BLM is proposing under Alternative 3 to designate almost 18 million acres of PHMA in Wyoming, *see* Draft EIS at 2-12, thereby prohibiting fluid mineral leasing, minerals and mineral materials permits, non-energy mineral leasing, ROWs, renewable energy projects, grazing, and any other access to federal lands. *Id.* at 2-2. In addition, under Alternative 4, BLM is proposing to require that all PHMA in Wyoming be managed with no surface occupancy stipulations for new oil and gas leases. *Id.* Also, under Alternatives 3 and 6, BLM is proposing to designate 839,225 acres as Areas of Critical Environmental Concerns ("ACECs"),[1] with the

[1] ACECs are "areas within the public lands where special management attention is required . . . to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C § 1702(a). Designation of an ACEC requires BLM to find that (1) the area needs special management to protect the resource that is the basis for the designation, (2)

ACECs under Alternative 3 being managed as PHMA (i.e., off limits to mineral and non-energy mineral leasing, ROWs, renewable energy projects, etc.). *Id.* at 2-118–2-119. No ACECs are currently proposed in the checkerboard, a decision that Sweetwater Royalties supports.

Nonetheless, BLM's proposed restrictions on leasing, ROWs, access, and development on PHMA and ACECs under Alternatives 3, 4, and 6 violates BLM's obligation to manage public lands for multiple uses. BLM, instead, is unlawfully elevating sage-grouse habitat conservation above all other uses when such measures are not warranted given the already existing state-specific protections in place.

B. BLM's Anti-Development Alternatives Interfere with Valid Existing Rights

FLPMA provides that "nothing in this Act . . . shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act," and that "all actions by the Secretary concerned under this Act shall be subject to valid existing rights." Pub. L. No. 94-579, § 701(a) & (h), 90 Stat. 2743, 2786-87, reprinted in 43 U.S.C.A. § 1701 historical note; *see also Cty. of Okanogan v. Nat'l Marine Fisheries Serv*., 347 F.3d 1081, 1085 (9th Cir. 2003). Under this savings clause, the government cannot, under FLPMA divest a private party of an existing "land use right" or other "valid existing rights." *Id.* Fee ownership of lands and minerals are valid existing rights, in addition to those federal leases and permits associated with project development relating to those lands and minerals. BLM cannot take or interfere with them without due process of law. *See W. Watersheds Project v. Haaland*, 22 F.4th 828, 842 (9th Cir. 2022) (recognizing that an oil and gas lease is a "legally protected interest in [a] contract right with the federal government").

BLM's Draft EIS states that the RMP Amendment "will recognize valid existing rights." Draft EIS at I-7; *see also id*. at 2-28 (disturbance caps are subject to valid existing rights). Nonetheless, under alternatives that include ROW exclusion areas, for example, BLM admits that valid existing rights holders (such as oil and gas lessees or other project developers) will be indirectly impacted by the inability to build access roads, lay pipelines, construct transmission lines, or otherwise traverse federal lands to fully develop their private property or valid existing rights on federal property. *See*, *e.g.*, *id.* at 4-21, 4-82, 4-92.

As shown on the map above, and the following map highlighting in yellow Alternative 3's proposed PHMA in relation to Sweetwater Royalties' checkerboard interest (both maps attached), Sweetwater Royalties' private surface and mineral estates in the checkerboard of Southern Wyoming are (a) completely within BLM's proposed PHMA under Alternative 3; (b) adjacent to several ROW exclusion areas under Alternative 5; and (c) within and adjacent to several ROW avoidance areas under Alternative 5.

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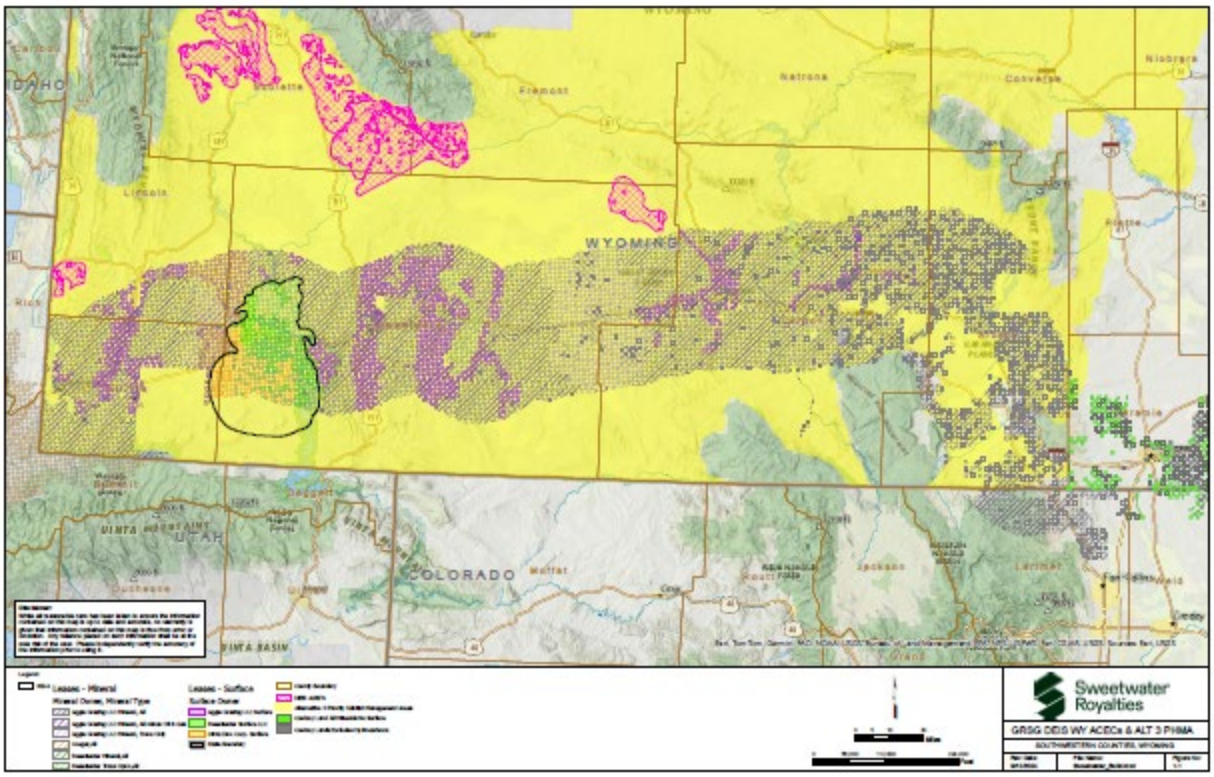
that a relevant resource exists in the area, and (3) that the relevant resource be of sufficient importance to warrant special management attention. 43 C.F.R. § 1601.7-2.



Of course, BLM's proposal to designate new PHMA under Alternative 3 and make that PHMA off limits to development means that BLM is proposing to indirectly restrict the development of surrounding non-federal lands that may require access to or across the federal lands. This harms Sweetwater Royalties and other private owners in the checkerboard lands. Similarly, ROW avoidance and exclusion areas make it difficult for private owners to site and develop projects that may need access across federal lands.

In other words, BLM's over-restriction of public lands for GRSG conservation will unlawfully interfere with valid existing rights—especially in the checkerboard of Wyoming—by prohibiting valid existing rights holders from accessing public lands to the extent necessary to develop their private and/or pre-existing property interests. That violates FLPMA and unlawfully interferes with valid existing rights without due process of law. Sweetwater Royalties urges BLM to reject Alternatives 3 and 6 and, as discussed above, BLM should ensure that any finalized RMP *truly* recognizes and respects valid existing rights.

C. Restricting Project Development on Public Lands Harms States and Local Communities

Severe restrictions on new leasing, new ROWs, surface access, and other restrictions within PHMA and ACECs located in Wyoming, particularly within the checkerboard of Southern Wyoming, will pose significant hurdles for Sweetwater Royalties and other private interest owners' development of oil and gas, trona, lithium, renewable energy, carbon capture and sequestration projects, infrastructure and other projects. The socio-economic impact to

Wyoming, local communities, and to Sweetwater Royalties as the major mineral owner in the state, would be devastating. If BLM implements the anti-development aspects of Alternatives 3, 4, or 6, Sweetwater Royalties stands to lose hundreds of millions to billions of dollars in land value and lost revenues from projects already under development and future development projects in the Rock Springs, Kemmerer, and Rawlins Field Office areas.

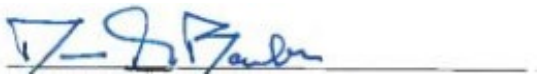
It is critical that BLM's land planning decisions consider the impacts to the states and local communities. As BLM itself acknowledges, "[m]any western states and local governments are heavily dependent upon these mineral revenues for a significant portion of their annual budgets and rely on dollars generated from mineral development to fund schools, roads, and other public services." Draft EIS at 3-50. And Wyoming had the highest disbursement from nonenergy mineral extractions, in 2022, with about $8.4 million (all of which came from sodium-based minerals such as trona). *Id.* at 3-47. Given Wyoming's heavy reliance on the economic benefits derived from projects on federal lands, BLM should reject Alternatives 3, 4, and 6.

IV. Conclusion

Sweetwater Royalties urges BLM to make the few suggested changes discussed above before finalizing the RMP amendment. Sweetwater Royalties vigorously objects to BLM's anti-development alternatives—Alternatives 3, 4, and 6—particularly as they apply restrictions on development within the checkerboard area of Wyoming that interfere with the Sweetwater Royalties' private surface and mineral estate ownership rights. We ask that BLM abandon these or other similar restrictive habitat management tools as they are unnecessary for achieving GRSG conservation goals and inconsistent with BLM's duties to manage public lands for multiple uses under FLPMA. BLM should not manage federals lands in such a way as to interfere with private surface and mineral estate ownership rights and project development across the checkerboard areas of Wyoming.

Please include these comments in the administrative record for this GRSG RMP amendment effort. If you have questions, please contact me at db@sweetwaterroyalties.com or 212.535.6435.

Sincerely,



Damon Barber
Chief Executive Officer
Sweetwater Royalties

32220906

I appreciate the chance to share my thoughts on the "Greater Sage-Grouse Rangewide Planning Draft Resource Management Plan Amendment and Draft Environmental Impact Statement, DOI-BLM-WO-2300-2022-0001-RMP-EIS".

In this section, we'll delve into key concerns and decisions that are pertinent across all state RMP plan amendments, as outlined in the 2024 GS plan.

Alternatives Comments

Alternative 1, the BLM would re-adopt the applicable GRSG habitat management area (HMA) boundaries, goals, objectives, and actions from the 2015 Records of Decision (ROD)/ARMPAs (as updated through maintenance actions). The existing language in the plans from the 2019 ARMPAs would revert to that contained in the 2015 ARMPAs (as maintained). Due to the U.S. District Court of Idaho's preliminary injunction preventing implementation of the 2019 amendments, this alternative reflects how the BLM is currently managing GRSG habitat on public lands. This includes designation of some areas of PHMA as Sagebrush Focal Areas (SFA) with a recommendation to withdraw them from mineral location and entry under the Mining Law of 1872 and prioritization for various other activities related to vegetation treatments, livestock grazing, and wild horses and burros.

> Currently, management of sage grouse on BLM lands has seen prominent declines in populations. This alone calls for a new management regime that prioritizes the existing habitat and stable populations that remain. I do not support Alternative 1.

Alternative 3 includes the most restrictive measures to protect and preserve GRSG and its habitat. Alternative 3 would update the habitat management area boundaries based on new information and science that has become available since the 2015 and 2019 efforts. All habitat management areas would be managed as PHMA. The BLM would close PHMA to new fluid mineral leasing, saleable minerals/mineral materials permits and nonenergy leasable minerals leasing (development associated with existing permits and leases would not be precluded). PHMA would be recommended for withdrawal from location and entry under the Mining Law of 1872 and would be unavailable for livestock grazing. PHMA would also be right-of-way (ROW) exclusion areas. Where there are currently designated wild horse and burro herd management areas overlapping PHMA, the wild horse and burros herd management area would become a Herd Area that is not managed for wild horses and burros. Under Alternative 3, the BLM would designate 11,139,472 acres of ACECs specific to the management of GRSG; the ACECs would include portions of PHMA and would have the same allocations (i.e., allowable uses) as the rest of PHMA. No areas would be identified as SFA because Alternative 3 considers the greatest level of restrictions on resource uses in all GRSG HMAs.

> While Alternative 3 offers more management needed for sage grouse, it still lacks many needed actions.

Alternative 5 considers other potential alignments of habitat management areas and associated management to try and balance GRSG conservation with public land uses. If State governments

updated the GRSG management area boundaries in their specific State plans, the BLM is considering those boundaries on public lands in Alternative 5. HMAs are similar to but refined from Alternative 4 and restrictions would generally be similar to Alternative 4, except for oil and gas in Wyoming which is similar to Alternative 2. However, reasonable differences in management would be considered while still providing GRSG conservation, Alternative 5 considered options with fewer restrictions on resource uses and provided more opportunities for considering compensatory mitigation to offset impacts on GRSG and its habitat. Areas previously identified as SFAs are managed as PHMA. The primary difference between management of SFAs in the 2015 Plans and PHMAs in this planning effort is that PHMA would not include a recommendation for withdrawal or prioritization strategies.

> While Alternative 5 claims "to balance GRSG conservation with public land uses."[1] As will be described later in more detail, the continued decline of sage grouse numbers indicates that past management has failed to arrest this situation. Further, Alt 5 will perpetuate management that has failed.

Under Alternative 6, management for all habitat management areas and the topics being considered in the range of alternatives would be the same as described for Alternative 5, but with the addition of ACECs. ACEC boundaries would be the same as described for Alternative 3, but management would be less restrictive compared to Alternative 3, though generally more restrictive than the rest of Alternative 6 PHMA.

Today, sage grouse are managed under the 2015 version of BLM land use plans. While the 2015 Plans have significant defects, they are far more protective of sage-grouse than the 2019 Plans. The 2019 plans were enjoined by a 2019 court ruling. "If implementation of current conservation programs were effective and sufficient, I would expect that trends for many sage-grouse over the last 6 years would have begun to stabilize or in some cases may have begun to increase."[2]

Planning criteria not met in 2024 SG planning EIS

Planning criteria provides requirements that the preferred alternative must be met in order for an approved land use plan. In the 2024 GS plan, not all of the criteria BLM must follow in amending land use plans for sage grouse have been followed, and as a result, this EIS is, in part, inadequate.

In the notice of intent announcing the scoping process for this 2024 BLM plan, BLM presents planning criteria to be used in designing the decisions. These criteria included, "The land use plan amendments will be completed in compliance with all relevant Federal laws, Executive Orders, and management policies of the BLM."

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[1] BLM. 2024. Greater Sage-Grouse Rangewide Planning Draft Resource Management Plan Amendment and Draft Environmental Impact Statement DOI-BLM-WO-2300-2022-0001-RMP-EIS. ES-5

[2] Garton, E.O., Connelly, J.W., Horne, J.S., Hagen, C.A., Moser, A. and Schroeder, M.A., 2011. Greater sage -grouse population dynamics and probability of persistence. Studies in Avian Biology, 38, pp.293-381.

In 2019, the Trump sage grouse planning amendments were challenged successfully in court. This court ruling represents a relevant Federal law. The court ruling found that the 2019 Trump sage grouse plans had these "common errors across numerous Plans, including (1) failing to take a range-wide analysis, (2) failing to evaluate climate change impacts, and (3) generally removing protections for the sage grouse that were unjustified by science or conditions on the ground."[3] Further this court ruling noted "the inadequacy of federal land use plans to protect sage-grouse, particularly from energy development impacts."

In summary, the court rulings found these problems with BLM's earlier sage grouse plan amendments.

1. BLM failed to consider alternatives that would have partially fulfilled its purpose and need.
2. BLM failed to evaluate baseline condition changes affecting sage-grouse.
3. Insufficient analysis of cumulative impacts.
4. The Trump era 2019 plans "rescinded or weakened numerous 2015 Plan measures.
5. Opened priority sage grouse habitats to energy development.
6. "BLM misrepresented or avoided addressing adverse environmental impacts.
7. The 0.25 and 0.6 mile buffers to exclude mineral development are inadequate to protect sage-grouse.
8. This court found that the 2011 Report on National Greater Sage-grouse Conservation Measures "contains the best available science concerning the sage grouse" and many recommendations of this report were ignored.

These comments detail the inadequacy of how this 2024 sage grouse plans to assess cumulative impacts, weaken conservation measures, relaxes conservation in mineral develop areas, fail to apply the best science in determining buffers, and misrepresent impacts.

In this EIS I have an unusual opportunity. The 2024 GS plan EIS takes place after nine years of BLM sage grouse management, giving us the opportunity to evaluate what worked and what did not. This 2024 GS plan notes a range-wide population decline of nearly 80 percent from 1966-2021 and of 41 percent from 2002-2021.[4]

[3] https://advocateswest.org/wp-content/uploads/2019/04/Sage-Grouse-Plan-PI-Decision-10-16-2019.pdf

[4] Coates, P.S., Prochazka, B.G., Aldridge, C.L., O'Donnell, M.S., Edmunds, D.R., Monroe, A.P., Hanser, S.E., Wiechman, L.A., an d Chenaille, M.P., 2023, Range-wide population trend analysis for greater sage-grouse (Centrocercus urophasianus)—Updated 1960–2022: U.S. Geological Survey Data Report 1175, 17 p., https://doi.org/10.3133/ dr1175.

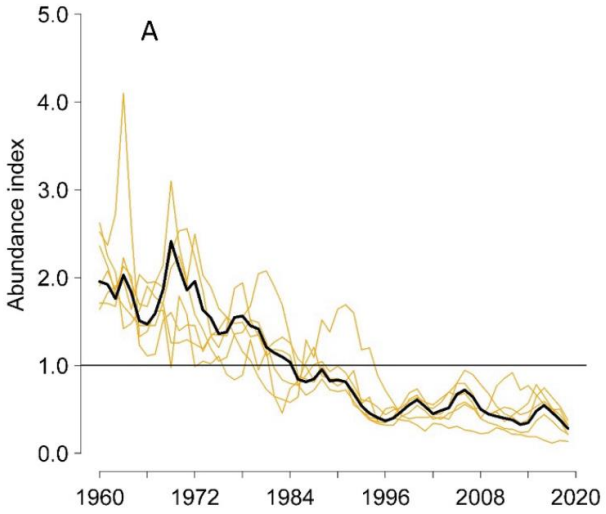

Figure 18. Abundance index of greater sage-grouse (Centrocercus urophasianus) across their range from lek observations (Coates et al 2021)

The 2015 sage grouse plans applied adaptive management triggers to identify problem areas where sage grouse numbers had rapidly declined. The 2015 plan argued that if a trigger was not exceeded, or in other words met, the plans' stated management was appropriate. BLM reported that 42 population triggers had been tripped through 2020 in the range of sage grouse. Coates et al. 2023 reported declines in sage grouse populations range wide both in areas where hard and soft triggers occurred and in most other areas too. Clearly, the current adaptive management process is not working.

BLM uses soft and hard triggers with varying degrees of damage and impacts. Soft triggers require additional monitoring to determine the cause and leaves open if any management change is required. Hard triggers should require immediate corrective action.

In this EIS and earlier monitoring reports, BLM has not shown that this soft and hard trigger adaptive management has stopped or reversed sage grouse population declines. The claim that all areas except where triggers occur meet conservation goals is in conflict with sage grouse monitoring numbers. Often watch thresholds indicate problems that need attention now in order to begin corrective action early.

This plan is vague and does not clearly state that TAWS replaces the earlier soft and hard trigger adaptive management. The plan should clarify this. I request that this be a central part of the final decision.

The standard for sagebrush habitat characteristics was described in Connelly et al (2000)[4]. This standard applies today and should be the basic measure to determine if habitat meets the

needs of sage grouse. The needs of sage grouse were described by habitat with measurable characteristics for sagebrush, grass, and forb habitat. For wetter sagebrush communities (mesic), sagebrush should be between 40-80 cm high and cover between 15-25% of the canopy. Equally important for cover and food for chicks, grass and forbs should be higher than 18 cm on average and cover more than 25% of the canopy. Most habitat areas meet the sagebrush criteria. However, few areas meet the grass-forb canopy percentage requirements. If the grass and forbs are degraded and cover impaired in the interspace areas between sagebrush plants, chicks will be more vulnerable to predators and lack needed insects and herbaceous plant forage.

None of these triggers consider the canopy cover or height of grass-forbs and miss areas where cover is sparse. The habitat threshold only considers habitat destruction but not habitat degradation.

While BLM claims that monitoring methods in Assessment, Inventory, and Monitoring (AIM) and Habitat Assessment Framework (HAF) measure grass and forb canopy cover and height, in practice, data have not been assembled and presented to show which areas fail to meet the habitat standard. This failure in this EIS clearly shows BLM avoided addressing adverse environmental impacts thus making this EIS inadequate to assess current conditions.

The NTT Report recommended closing these priority sage-grouse habitat areas to oil and gas or other mineral leasing, concluding that "[t]here is strong evidence…that surface-disturbing energy or mineral development within priority sage-grouse habitats is not consistent with the goal to maintain or increase populations or distribution." This plan continues to allow oil and gas activities often giving waivers or exemptions to protective measures.

The court continued, "The 2019 Amendments included significant changes to mandatory buffers around sage-grouse leks in designated habitat areas. In Idaho and Nevada/California, the BLM reduced existing lek buffers by several miles. Colorado removed the prohibition on oil and gas leasing within 1 mile of active sage-grouse leks, opening up approximately 224,000 acres of previously-protected habitat. The application of buffers around lek sites was changed from mandatory to discretionary in Colorado, Utah, and Nevada/California, and the plans in Idaho and Wyoming now allow BLM officers to exempt projects from buffers in more circumstances."

This 2024 SG plan further weakens the buffer distances, Volume 2, 19-2 reduces buffer distance to 0.6 miles for most disturbances. The 2024 SG Plan maintains that buffer distances follow US Geological Survey Report Conservation Buffer Distance Estimates for Greater Sage-Grouse – A Review (Open File Report 2014-1239; Manier et al. 2014) in accordance with Appendix B, Applying Lek-Buffer Distances.

Manier et al. 2014 provides a history of studies on sage grouse buffer distances to determine the buffer distance needed to include most if not all nest sites. The 0.6 mile (one kilometer) buffer distance used by many states base this distance on one study[5], Wallestad, R. and

[5] Connelly, J.W., Schroeder, M.A., Sands, A.R. and Braun, C.E., 2000. Guidelines to manage sage grouse populations and their ha bitats. Wildlife Society Bulletin, pp.967-985.

Schladweiler's 1974 study in Montana. Wallestad and Schladweiler (1974) used radio collars on fifteen sage grouse cocks (females) for two seasons in 1968 and 1972. Even though this study recommended the buffer radius to be "no less than 1.5 miles from the strutting grounds", BLM chose 0.6 miles as the buffer distance.

BLM has misinterpreted the dependent study and ignored more recent studies. "More recent analyses have indicated that 90–95 percent of habitat use at the population level was focused within approximately 8 km (5 miles [mi]) of several California and Nevada lek sites (Coates and others, 2013), and 95 percent of all nests were located within approximately 5 km (3.1 mi) of leks. Holloran and Anderson (2005) found that 64 percent of nests in Wyoming occurred within 5 km (3.1 mi) of leks, suggesting considerable protection of sage-grouse within these proximate habitats." (Manier et al. 2014). The choice of too small a buffer for protecting nesting sage grouse is one more reason that the population continues to decline at a slow but steady rate. This plan should select a buffer size consistent with scientific recommendations.

The court ruling continues that for many states "BLM replaced "hard" triggers requiring management changes with "warnings" and will now apply triggers only at the lek cluster scale, which could allow individual leks to blink out without corrective management action." The problem is made worse by an averaging of data over a larger habitat area. To reach population levels with as much as 40% decline in a single year, almost all the leks in a cluster must see an enormous change. The habitat triggers, too, require large rapid changes. As a result, the situation we face, slow population decline of three or four percent over a longer period of time, is not caught with these trigger thresholds. Since a trigger threshold must be first crossed, management does not respond to pervasive chronic habitat degradation. This plan continues to cluster trigger assessment perpetuating this problem.

"BLM failed to consider serious environmental consequences in the adoption of the 2019 Plan Amendments." There was a "lack of a substantive cumulative impact analysis." "BLM's EISs do not contain a sufficient cumulative impact analysis under NEPA and, most importantly, do not contain any justification for that failure." "The EIS failed to take the required "hard look" at the environmental consequences . . . "

The 2024 GS EIS describes the impacts in Appendix 14 in Volume 3. This section describes actions pending and past on sage grouse habitat areas. However, the degree of impact from each action is absent. There is no impact analysis given. Table 14-1. Is titled "Past, Present, and Reasonably Foreseeable Actions" and lists over 100 actions that affect roughly 50 million acres of sage grouse habitat on public lands, most of the occupied habitat on public lands. Nowhere is there any analysis of the past or pending impacts to sage grouse. The size and degree of habitat to be impacted is not presented. The estimated population loss of sage grouse is not assessed.

Grazing, rangeland health, and restoration Alternatives needed to meet herbaceous plant cover standards were not considered.

Hunting of sage grouse.

Annual hunting of sage grouse continues in spite of the continuing decline of this population. This impact on the population is not reported or analyzed in the cumulative impact analysis. These states offer sage grouse hunting: Utah, Oregon, California (closed for 2023), Nevada, Idaho, Montana, Wyoming, and Colorado. Sage grouse have been removed (extirpated) from Arizona, Kansas, Nebraska, New Mexico, Oklahoma, and British Columbia. Even though many thousands of mature sage grouse are hunted and killed and the population continues to decline, there is an absence of independent studies on this impact to sage grouse recovery. Habitat loss and degradation coupled with other factors may indicate that hunting amplifies the rate of population decline that has been seen[6]. A number of studies show hunting is additive to other factors impacting sage grouse numbers.[7]

[8]In 1928, the court ruled that the federal government can have authority over state wildlife laws and hunting in order to protect lands and wildlife.[9] BLM as other agencies have authority to limit the scope, species, and manner of hunting on public lands. Unlike Fish and Wildlife Service actions to manage hunting in wildlife refuges, BLM has not taken actions to limit hunting as a means of conservation for sage grouse.

This 1928 court ruling found that "The direction given by the Secretary of Agriculture was within the authority conferred upon him by Act of Congress. And the power of the United States to thus protect its lands and property does not admit of doubt…the game laws or any other statute of the State to the contrary notwithstanding."

In addition to not considering management of hunting, this 2024 GS plan fails to consider the presence and impacts of hunting on sage grouse on public lands.

Mitigation

The 2021 NOI for this plan made this commitment: "The application of the mitigation hierarchy, including compensatory mitigation, to address impacts to GRSG and sagebrush habitat, ensure that additional disturbance will not contribute to GRSG and sagebrush habitat loss and GRSG population declines, and help support the conservation and restoration of resilient habitat."

"BLM will apply the mitigation hierarchy (avoidance first, then minimization, compensation last) when authorizing actions resulting in GRSG habitat loss and degradation." 2024 GS Plan 2-22. While avoidance is claimed as a priority, broad agency discretion allows the project to continue applying the minimization hierarchy which may include actions that degrade habitat and sage grouse populations.

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6 Wallestad, R. and Schladweiler, P., 1974. Breeding season movements and habitat selection of male sage grouse. The Journal of Wildlife Management, pp.634-637.

7 Dinkins, J.B., Lawson, K.J. and Beck, J.L., 2021. Influence of environmental change, harvest exposure, and human disturbance on population trends of greater sage-grouse. Plos one, 16(9), p.e0257198.

8 Gibson, R.M., Bleich, V.C., McCarthy, C.W. and Russi, T.L., 2011. Hunting lowers population size in greater sage-grouse. Ecology, conservation, and management of grouse. Studies in Avian Biology, 39, pp.307-315.

9 Federal vs state Hunt vs. The United States 278 U.S. 96 (1928)

When avoidance is not taken, impacts are to be “minimized” through managing the severity of impacts at a specific location. This policy does not require impact to be limited to those that do not affect population numbers. To conserve sage grouse, such limits should be required and added to this EIS.

The last part of mitigation is compensation: ”(a)ny impacts that cannot be avoided or minimized to no net habitat loss would be compensated at a level and in a manner to fully offset both direct and indirect (e.g., disturbance, noise, changes in water availability) impacts to habitat function.” 2024 GS Plan 2-23. This allows projects to completely destroy habitat and sage grouse populations with a promise of actions on some other site. This EIS offers no proof that compensation will lead to functional sage grouse and populated numbers of sage grouse equal to the project site habitat lost. The very nature of sage grouse makes compensation almost impossible in a meaningful way.

The 2024 GS EIS notes this important conclusion on mitigation. “Compensatory mitigation will not be required for activities implemented to conserve species listed as threatened or endangered under the Endangered Species Act” (2024 SG EIS pg 2-23). Because we face range wide decline and large scale population extirpation of sage grouse population, compensation should also not be applied to these land use plans being revised. BLM offers no objective proof that compensation aids in increasing sage grouse population in the project area. For this reason, I recommend the preferred alternative to eliminate compensation as part of mitigation.

Disturbance

Disturbance is a term that is not clearly defined in this DEIS. This DEIS notes some land disturbing actions such as roads, drill pads and other physical structures. I agree, these present a significant disturbance to sage grouse. Unfortunately, the current discussion on disturbance analysis specifically exempts from consideration other land disturbances that can seriously degrade habitat. Fires, vegetation treatments, fence lines, water distribution systems are a few of the habitat degradation that are exempt from consideration for disturbance. Further, the term disturbance does not consider the condition of the habitat now. Degraded lands that fail to meet the sagebrush habitat characteristics are not considered disturbed and they should be. This issue is important because it speaks to the key issue of identifying habitat that fully meets sage grouse needs. As now described in this DEIS, the assessment of disturbance does not fulfill this.

suggest adding to the EIS a definition of disturbance as it relates to sage grouse. This could be added to the glossary terms. Any change in the characteristics of sagebrush habitat that causes an area to no longer meet the sagebrush habitat characteristic standards (described in Table 3 of Connelly et al. 2000) should cause an area to be considered disturbed. In assessing disturbance, the cumulative effects of all factors that affect habitat condition and meeting standards should be considered.

Adaptive management

This 2024 plan continues to recommend applying adaptive management as the means to respond to situations where sage grouse population numbers and their habitat conditions are causing negative influences. In order to conserve this species such adaptive management must be "effective at conserving sage-grouse and their habitats." (2024 GS plan pg. 2-120) Because adaptive management involves broad discretion, it may not be focused just on sage grouse conservation. And, as described, adaptive management may lead to actions that harm habitat and sage grouse populations.

For each BLM land use plan, sage grouse conservation relies on adaptive management. "Adaptive Management is a decision process that promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood."[10] As applied in this EIS, adaptive management involves using soft and hard triggers that when reached would require management changes. One of the shortcomings of adaptive management is that success of adaptive management involves consideration of conflicting goals including helping to meet environmental, social, and economic goals and goals of different stakeholders. For this reason, economic and stakeholder goals may lead to actions that prevent needed sage grouse conservation.

In order for adaptive management to meet sage grouse conservation goals, this EIS should explicitly limit adaptive management to goals that focus on sage grouse conservation. Adaptive management must include monitoring that identifies early sage grouse habitat or population loss or degradation, causes management changes that correct problem causes, and leads to the habitat and population losses being reversed and rectified.

With a few minor differences, all the alternatives would continue to use the soft and hard trigger approach to guide adaptive management described on page 2-122. Clearly this system has failed and, almost without exception, sage grouse numbers continue to decline without thresholds catching problems. I recommend removing the existing trigger thresholds and replacing this with TAWS. Described as TAWS, the Targeted Annual Warning System was presented in Coates et al. (2023) and is described in this DEIS. BLM should take immediate action when TAWS calls for watching as well as warning. Actions needed to rectify problems often are slow to see results and should be taken as early as possible.

Areas of Critical Environmental Concern (ACEC)

"The designation "areas of critical environmental concern" or ACEC is defined as a place where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." (43 USC 1702)

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[10] Spillman, R.J., 1963. Legal Aspects of Hunting on Public Lands. Rangeland Ecology & Management/Journal of Range Management Archives, 16(3), pp.105-109.

In the early sage grouse planning process, the.BLM called for and received nominations for ACECs to protect GRSG. Additionally, BLM found that about 11 million acres met the relevance and importance criteria in the ACEC evaluation (Appendix 5). ACECs were recommended for Alternative 3 and 6 but not in the preferred alternative. These 11 million acres represent 32% of the Preferred Habitat Management Areas and 19% of the occupied sage grouse habitat.

To many wildlife and public lands advocates, ACECs are considered a tool to protect habitat and sage grouse populations. ACECs can be nominated by the general public. With “special management", designations of ACECs provide benefits to wildlands and wildlife. In order to protect sufficient habitat, ACECs should be designed for all the areas suggested under the specific state sections.

This DEIS considered the designation of ACECs under earlier rules now replaced. The new Public Lands Rule includes guidance to the BLM about ACECs designations if they meet the relevance and importance criteria and the criteria for requiring special management attention to prevent irreparable harm to the resource. As a result, the analysis BLM conducted for ACECs for this DEIS was inconsistent with the requirements and should be revisited.

The preferred alternative of the 2024 SG EIS generally rejected the idea to protect most sage grouse areas as ACECs. The plan argued that their criteria of relevance and importance failed to qualify these areas. In deciding to reject areas where sage grouse numbers continue to decline and are likely to disappear, BLM failed to consider the irreparable damage this species faces on public lands. Unfortunately, BLM’s direction on considering which areas to recommend as ACECs, fails to implement this key obligation in FLPMA. To make the planning decision that this DEIS describes consistent with current policy and the intent of FLPMA, I ask that these ACEC considerations be reconsidered noting the current and likely future harm sage grouse habitat and populations face when designating ACECs.

Livestock Grazing’s Impact on Sage Grouse

Western grasses are adapted to aridity and not to grazing by livestock and other large hoofed ungulates. “Historically, there were few large grazers in arid and semi-arid parts of Australia, South America, and the North American Great Basin. Before the introduction of domestic livestock by Europeans, grasses and other plants in these regions had little exposure to heavy grazing. As a result, they never evolved adaptations such as ground-level buds or asexual reproduction that would have allowed them to avoid or tolerate heavy grazing. Consequently, grasses in these regions are severely damaged by heavy livestock grazing (Mack and Thompson 1982)”[11] (Belsky 2001)[12]. Less than 1 percent of the sagebrush steppe has not been negatively influenced by livestock grazing (West 1999).[13]

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[11] Department of the Interior. 2008. Department Manual, Part 522: Adaptive Management

[12] Mack, R.N. and J.N. Thompson. 1982. Evolution in steppe with few large, hooved mammals. American Na turalist 119:757–73.

[13] Belsky, Joy. 2001. Allan Savory’s Holistic Management: Scientific Misinformation on Grazed Ecosystems (unpublished) and A. J . Belsky, “Does herbivory benefit plants? A review of the evidence,” American Naturalist, vol. 127, no. 6, pp. 870 –892, 1986. View at Scopus

"In an important paper, Mack and Thompson (1982; see also Knapp 1996), observed that the structure of the arid steppe plant communities of intermountain western North America, marked by (among other things) caespitose grasses and a widespread cryptogamic crust, is not consistent with the presence of substantial herds of large mammals of any sort. The native grasses of this region do not tolerate heavy levels of ungulate grazing (and were rapidly replaced by alien species after the introduction of livestock) and cryptogamic crusts are rapidly destroyed by trampling. The paleontological and archaeological records available for the Great Basin are fully consistent with this argument" (Grayson 2006).

"Prior to the arrival of European man, vast herds of ungulates, primarily bison, roamed the Great Plains region of North America east of the Rocky Mountains" (England and DeVos 1969). Ungulates were comparatively rare in the more arid regions west of the Rocky Mountains (Grayson 1993; Daubenmire 1988). The evolutionary implications of these diverse scenarios are reflected in the contemporary vascular plant and biological soil-crust communities (Mack and Thompson 1982). The Great Plains east of the Rocky Mountains are dominated by rhizomatous, sod forming grasses; biological crusts occupy only a relatively small portion of the soil surface. In contrast, lands west of the Rocky Mountains are dominated by scattered bunch grasses and shrubs; the interspaces between the vascular plants are frequently covered with well-developed biological crusts" (Warren and Eldridge 2001).

While sagebrush are key to sage grouse, so too are the grasses and forbs (herbaceous plants) in the interspaces between the shrubs. In relict (ungrazed) areas reflecting pre-settlement conditions, bunch grasses often filled these interspace areas at heights and densities equal to the sagebrush. Today, the herbaceous plant communities in many sagebrush areas perhaps, a majority of areas, are significantly degraded.[14][15][16] It is key to maintain herbaceous vegetation cover to reduce predation during nesting.[17] This herbaceous vegetation provides essential young plants and insects that chick demand.

There is strong evidence that this pervasive degradation of herbaceous vegetation in sagebrush areas may be a significant factor in the decline of sage grouse populations. Many of the anthropocentric impacts to sage grouse occur in a number of places and these impacts negatively affect sage grouse numbers. However, these impacts such as vegetation treatments, mineral development, transmission lines and more do not explain the range wide decline in numbers. Livestock grazing as practiced, is found range wide and, thus, is the most significant range wide influence that explains the range wide decline in sage grouse numbers.

This 2024 SG EIS suggests that season changes in grazing use may help. For those allotments that graze during the breeding and brooding period, livestock grazing use should be delayed

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[14] West, N.E. 1999. Managing for biodiversity of rangelands. Chapter 7 (101–26) in Biodiversity in agroecosystems, edited by W.W. Collins and C.O. Qualset. Boca Raton: CRC Press.

[15] Cottam, Walter and Frederick Evans. 1045. A comparative study of the vegetation of grazed and ungrazed canyons of the Wasatch Range, Utah. Ecology Vol 26 no 2 pp 171-181

[16] Natural Resources Conservation Service. 2024. Soil Survey of Grand Staircase Escalante National Monument Area, Parts of Kane and Garfield Counties, Utah

[17] Catlin, J.C., Carter, J.G. and Jones, A.L., 2011. Range management in the face of climate change. Natural Resources and Envir onmental Issues, 17(1), p.24.

until the end of the main growing season[18] normally the middle of June in many sagebrush areas.[19]

This plan fails to recognize degraded BLM lands and offer as an alternative ecological restoration. BLM uses Rangeland Health Standards to assess which lands are degraded. At this time, 38% of allotments meet Rangeland Health Standards.[20] In those allotments, herbaceous plant community degradation is common. Any management should require immediate reductions in grazing use to a level that leads to full recovery of the herbaceous plant community.

During a permit renewal, BLM should inventory the plant community in the allotment assessing the allotment's ecological conditions, and document past grazing use. Based on this, BLM should conduct a range capacity analysis to determine a base stocking rate for the allotment. Stocking levels for allotments where herbaceous plant community is near its natural potential in terms of diversity and productivity and meets standards, permitted use should lead to less than 25% utilization (Braun 2006). For allotments where the herbaceous plant community is degraded, rest necessary for the native herbaceous plant community to reach diversity and production levels near potential should be required before grazing is returned.

California/Nevada

Sage Grouse Credit System

The Conservation Credit System (CCS) in Nevada, aimed at mitigating the impact of mining and industrial development on greater sage-grouse (GRSG) populations, falls short in addressing the complex needs of the species. The system's reliance on a "duck pond" model, where developers must create equivalent habitat elsewhere to compensate for lost habitat, overlooks the diverse habitat requirements of GRSG. Moreover, the CCS primarily focuses on conserving existing habitat rather than creating new habitats, leading to a gradual loss of habitat over time. Additionally, the assessment of impacts on GRSG populations often underestimates the effects of noise, dust, and activity associated with resource extraction, which can deter GRSG habitation far beyond the immediate disturbance area.

Furthermore, the loss of specific habitat features like meadows and mating grounds (leks) can have significant genetic and population-level impacts on GRSG. Displacement to less suitable habitats, resource competition, and increased depredation rates are also concerns. Although environmental protection measures can mitigate some effects, neither the CCS nor the Bank Enabling Agreement adequately address the extirpation of leks or population impacts. These impacts are considered major, requiring extensive mitigation efforts.

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[18] Sage-grouse National Technical Team. 2011. A report on national greater sage-grouse conservation measures. https://www.biologicaldiversity.org/species/birds/pdfs/GrSG_NTT_Report.pdf

[19] Monroe, A.P., Aldridge, C.L., Assal, T.J., Veblen, K.E., Pyke, D.A. and Casazza, M.L., 2017. Patterns in greater sage-grouse population dynamics correspond with public grazing records at broad scales. Ecological Applications, 27(4), pp.1096-1107.

[20] Braun, Clait, 2006. A blueprint for sage-grouse conservation and recovery. Grouse Inc. http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/pfodocs/anticline/revdr-comments/eg.Par.34919.File.dat/02Bio-attach5.pdf

The Resource Management Plan should provide federal land managers with the authority to withdraw sensitive GRSG habitats from resource extraction. Surface-disturbing energy or mineral development within GRSG habitats is deemed incompatible with maintaining or increasing populations. Withdrawal options should be considered to protect essential/irreplaceable habitats identified by the Nevada Department of Wildlife, particularly in areas threatened by mineral exploration and development. Evaluation of the extent of impact from mineral exploration and extraction is also crucial.

Geothermal implications for sage grouse

While I support renewable energy development, geothermal development should be considered in relation to sage grouse habitat. A 2023 USGS study on the impact of geothermals and sage grouse found decreased nest survival in association with proximity to geothermal infrastructure[21]. While some of the factors that led to a decreased survival rate in the study are true of most forms of energy development, some are unique to geothermal. Geothermal cooling towers produce a constant low hum, resulting in impacts to the sage grouse, which are sensitive to sound. Secondly, a commonly recognized threat to sage grouse populations are ravens. Human disturbances, like geothermal plants, create an ideal place for ravens to nest in an otherwise difficult environment for ravens to find high perches. Therefore, geothermal and other energy production should be sited as far away from known sage grouse leks as possible to avoid disturbance from sound and their raven predators.

Montana

Protection of key habitat for sage grouse would benefit numerous wildlife species in Montana

I support Alternative 3 for conservation of sage grouse and its habitat in Montana. This alternative protects the most acreage of suitable sagebrush-steppe habitat, and offers the best chance to recover the species in our state. It would protect many important areas for sage grouse as Areas of Critical Environmental Concern, which would ensure they maintain their condition as high-quality habitat.

The use of updated habitat management area boundaries in Alternative 3 that are based on the newest information and science makes it a better standard to base habitat protection for sage grouse on. The restrictions on mineral leasing and new permits would ensure the protection in these important areas needed to allow sage grouse to thrive. These strong conservation measures would benefit not only sage grouse, but also numerous big game species including mule deer, pronghorn antelope and elk. It would also benefit many sensitive prairie species including swift fox, pygmy rabbits and species of ground nesting birds.

[21] https://www.sciencedirect.com/science/article/pii/S0006320722004426?via%3Dihub

The restriction on livestock grazing in these areas would be a positive step for sage grouse recovery in these important habitats. In addition, the prohibition on new hard rock mining permits in all priority habitat management areas would be a strong step to conserve these essential habitats.

Utah

With more than five years under the current management in Utah, we continue to see a steady decline of sage grouse numbers. The preferred alternative should advocate increasing habitat protection and sage grouse number but, instead, promises to worsen conditions for sage grouse. By its own description, Alternative 5 in Utah seeks to weaken sage grouse habitat protection. The DEIS describes Alternative 5 seeks "to balance GRSG conservation with public land uses." Page ES-5. One of the glaring examples of this weakening of protection for sage grouse is the removal of Uinta Basin sage grouse management areas from inclusion in the plan.

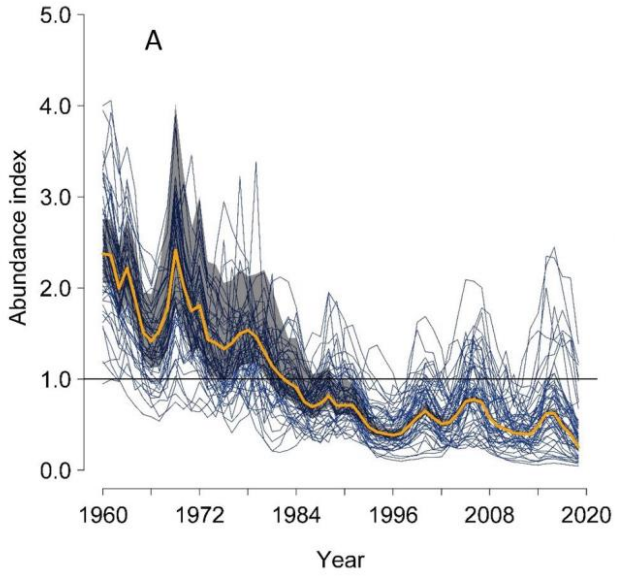

Figure 4.38. A, Abundance index (calculated as Nˆ divided by 60-year mean of Nˆ); and B, intrinsic rate of population change (rˆ) of greater sage-grouse (Centrocercus urophasianus) within the state of Utah from 1960–2019. Thick yellow line represents median estimates across all leks. Shaded areas represent 95-percent credible limits. Thin blue lines represent median values for neighborhood clusters. Black horizontal line (abundance index=1.0) represents 60-year average.

This DEIS would update thirteen BLM RMPs and two even older MFPs in Utah (Appendix 2.15 pg 453). I ask BLM to consider these recommendations to revise these plans.

In view of the failure of the past management to halt and reverse the decline in greater sage grouse number in Utah, I recommend that a new alternative be considered that covers these critical issues and that this be selected as the preferred alternative:

1. Add Uinta Basin sage grouse areas in Uinta and Duchesne Counties to PHMA. In Coates et al. (2023, page 166) map of Utah Level 2 Clusters, there areas are identified as D040, D055, D042, and D035.
2. Designate ACECs for PHMA and GMHA areas.
3. Exclude sage grouse ACECs from vegetation management projects. End forest and shrub conversions using chemical, fire, and mechanical means.
4. Replace the current hard and soft trigger adaptive management with the Targeted Annual Warning System was presented in Coates et al. (2023)
5. Revise monitoring to correct improper methods and accurately monitor sagebrush characteristics. Independently verify habitat monitoring now conducted by BLM range staff.
6. In habitat that meets the sagebrush habitat characteristics (Connelly et al 2000), delay grazing in breeding and brood areas until mid-August.
7. For habitat that fails to meet sagebrush characteristics, rest the area from grazing until recovery is achieved.
8. When renewing a grazing allotment, conduct a rangeland health assessment, conduct a range carrying capacity that maintains sage grouse habitat needs, and induces NEPA and public involvement. Do not use the appropriations rider to renew grazing permits in sage grouse habitat.
9. End compensatory mitigation for actions that would degrade or destroy sage grouse habitat.

None of the current alternatives of this DEIS meet these requirements and a new alternative will be needed. This is reasonably justified by cited studies, documents, and these comments.

ACEC designation is required to prevent the extinction of populations for some areas in a few years and for most areas within one or two decades. Further, the management BLM presents in the past five years has shown that these threats to sage grouse are dire and current management inadequate.

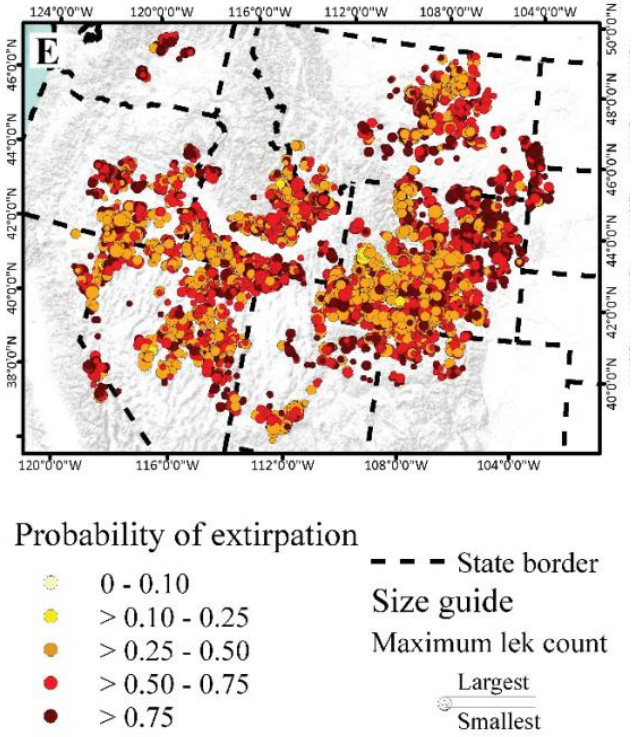

Figure 41. Spatial model predictions of extirpation probabilities for greater sage-grouse (Centrocercus urophasianus) at leks across different temporal scales within 48 years. Coates et al. 2023.

Triggers

Past adaptive management methods using triggers have failed to alert us of populations in trouble. Over the past five years, Utah BLM has only noted one adaptive management trigger being met by a sage grouse population reduction. In 2016, both hard and soft trigger thresholds were crossed in the Sheeprock Mountains in central Utah. Another event involving triggers on Parker Mountain in Utah proved to be a problem with monitoring.

Even when a sage grouse trigger threshold is met, actions are not taken that restore habitat to sage grouse needs. In fact, many actions did the opposite, amplifying habitat degradation.

Recently, BLM and the Forest Service have been conducting pinyon juniper forest and sagebrush vegetation treatments to improve forage production for livestock in the Sheeprock

Mountains. Black Crook Treatment Project called for 800 acres of pinyon juniper removal. BLM has planned to treat or has treated as much as 8,200 acres more at a cost or $220,000.

In response to the hard and soft triggers met in the Sheeprock Mountains BLM has not canceled future vegetation projects for this area nor reduced grazing needed to recover degraded habitat conditions. What BLM did, with the state agencies, was to "relocate" more sage grouse to this area.[22] This action does not alleviate the core problem, habitat degradation and excessive livestock herbivory. The numbers today still remain very low and continue to sharply decline. Because the numbers are so low, even a small population decline is a critical problem that will not be caught in the triggers which largely ignore small populations.

This demonstrates a chronic systemic problem with BLM's soft and hard trigger approach to adaptive management. In BLM's cited 2015-2020 monitoring report for Utah, only one area saw a trigger threshold met. Other areas also saw continued declines in populations and those population problems were not recognized with the adaptive management triggers. Coates et al. (2023) noted that a majority of habitat clusters had conditions that warranted a warning and recommended BLM take action (See Coates et al. (2023) Figure 8.1). This EIS should modify the preferred alternative to incorporate Coates et al. (2023)'s findings and design a remedy.

Encroachment

I ask that this DEIS correct the misinterpretation on the term "encroachment" for pinyon juniper forests. This misinterpretation affects future land use plans in this area. In Utah, mitigation as part of adaptive management may include removal of pinyon juniper forests. "Encroachment" is a common justification used by BLM. "In sagebrush (Artemisia spp.) ecosystems, encroachment of pinyon (Pinus spp.) and juniper (Juniperus spp.; hereafter, "pinyon-juniper") trees has increased dramatically since European settlement."[23] As I will explain, the pinyon juniper forests found today in most cases reflect recovery of forests seen prior to European settlement. European settlement significantly changed these forests and, in most cases, they are recovering to historic natural conditions.

This DEIS perpetuates the "encroachment" conclusion, "Pinyon-juniper woodlands naturally spread into sagebrush and perennial grass communities and have expanded across the landscape over the last 120 years (Miller et al. 2008;[24] Rowland et al. 2008[25])" Pg 3-18

This recurring theme has had a dominant impact on policy and action on the ground. Millions of acres of pinyon juniper forests have been removed or are proposed for removal justified by the encroachment belief. Many of the studies such as the often cited Miller et al. (2008) describe a

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[22] Herren, V., E. Kachergis, A. Titolo, K. Mayne, S. Glazer, K. Lambert, B. Newman, and B. Franey, BLM. 2021. Greater Sage -Grouse Plan Implementation, Rangewide Monitoring Report for 2015–2020. Page A13-24.

[23] Peter S. Coates, Brian G. Prochazka, Mark A. Ricca, K. Ben Gustafson, Pilar Ziegler, Michael L. Casazza,

[24] Miller, R.F., R.J. Tausch, E.D. McArthur, D.D. Johnson, and S.C. Sanderson. 2008. Age structure and expansion of piñon -juniper woodlands: a regional perspective in the Intermountain West. Res. Pap. RMRS-RP-69. Fort Collins, Colorado: United States Department of Agriculture, Forest Service, Rocky Mountain Research Station

[25] Rowland, M.M., L.H. Suring, R.J. Tausch, S. Geer, and M.J. Wisdom. 2008. Char acteristics of western juniper encroachment into sagebrush communities in central Oregon. USDA Forest Service Forestry and Range Sciences Laboratory, La Grande, Oregon 97850, USA.

major increase in pinyon juniper forests as occurring when the camera first arrived on the scene in 1900. Photos taken in the early years of the 20th century were compared with photos taken a hundred years later. These photos were taken decades after heavy logging had occurred in the pinyon juniper forests in this region. In the Great Basin a comparison of photos during the mining era with photos showing recent conditions of these forests showed forests were increasing in most areas. There are no photos prior to the start of logging which occurred before the camera was invented.

These encroachment studies failed to describe early European settlement's use of these forests. In addition to fences, building lumber, mine timbers, pinyon juniper forests were the major source of energy fuels especially for the mining industry. Throughout the late 1800s across the intermountain West, mining towns consumed enormous quantities of local juniper and piñon pine often as charcoal. However charcoal burners were not fussy and, in timber-poor areas, used piñon, juniper, mountain mahogany and even sage brush (Ryan 1992).[26] The Comstock mines in western Nevada consumed 18 million board feet of timber annually, much of it for mine timbers (Lanner 1981).[27] Mining operations in Eureka, Nevada burned 17,850 bushels of charcoal daily. At the time, charcoal was the greatest mining expense, even more than labor.

The arrival of the railroad in the west amplified economic activity in the Great Basin and Intermountain West, leading to a further increase in piñon pine logging (Graham and Sisk 2002).[28] By about 1870, the more than six hundred charcoal makers had depleted the forests for a distance of 50 miles around Eureka and many other communities (Lanner 1981). This band of removed forests around towns and mining areas was widespread, and included within the Cedar City Field Office area. By the end of the 19th century the piñon pine forests in the Great Basin had been radically reduced to a few stands mostly in places too rugged to be cut.

The seminal studies used to support pinyon juniper encroachment often exclude the influence of human logging. Miller et al. (2008), a commonly cited study, conducted field studies at six sites. A transect which varied in length from 14-24km was conducted at each site measuring the number, density, and age of pinyon juniper forests. One of the six sites of Miller et al. (2008)'s study occurred at site called East Tintic, Utah. This was located a few kilometers from the old mining town of Eureka, which was one of the top mineral producing areas in Utah in the later quarter of the 1800s. Prior to the railroads reaching Eureka, pinyon juniper wood was a primary energy and timber source for the growing industries. Miller et al. (2008) found that 99% of today's pinyon juniper trees in East Tintic were post settlement. If today's forest conditions found late in the mining period were compared with conditions prior to European settlement, studies would conclude that today's increase in pinyon juniper trees represented recovery of historic ecological conditions. "Encroachment" would be seen as an inappropriate term.

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[26] Ryan, Michael. 1992. The historic canyon creek charcoal kilns. The Origins of the National Forest, A centennial Symposium. The Forest Society

[27] Lanner, Ronald M. 1981. The piñon pine, a natural and cultural history. University of Nevada Press

[28] Grahame, John D. and Thomas D. Sisk, ed. 2002. Canyons, cultures and environmental change: An introduction to the land -use history of the Colorado Plateau. http://www.cpluhna.nau.edu/> southwestern United States: hydrology, and management. Lewis Publishers .

The forest that Miller e al. (2008) surveyed in East Tintic was historically a pinyon juniper forest ecosystem that had been almost completely logged for industrial use in the late nineteenth century. This information was ignored in Miller's study and by BLM. By failing to consider the ecological site and historic logging use, the conclusion of "encroachment" was falsely reached. This false conclusion has occurred far too often in many locations. As a result, land managers continue to ignore this history.[29] Instead, they should agree, today's forest cover most often reflects a recovering natural forest.

GIS analysis of presettlement and recent pinyon juniper forest cover

Using Natural Resources Conservation Service's soil survey maps, a comparison of today's pinyon juniper forests as described by ecological site descriptions was made with current National Agriculture Imagery Program (NAIP) data.[30] This study of BLM's Cedar City Planning Area, Utah, found that in the 3.8 million area, 34% of the area is currently pinyon juniper forests and, in presettlement times, 32% these forests were defined in Ecological Site Descriptions as pinyon juniper. This is an increase of 2% more area as pinyon juniper forests. For the same area currently 30% is sagebrush habitat and, in presettlement times, 29% was predicted to be sagebrush. This is an increase of 1% for sagebrush area in this area. Clearly, there has not been a major encroachment of pinyon juniper in this study area. Yet this area is the center of recent and future pinyon juniper removals with BLM using "encroachment" as the main justification.

Past and proposed pinyon juniper forest removals are significant

Under the name of the Utah Watershed Restoration Initiative, 2,5 million acres in Utah of mostly BLM and Forest Service lands have been treated at a cost of $377 million from 2006 to 20023.[31] Most of the funding has gone to forest and shrub land conversion into grass pastures with a bulk of the money being spent on BLM and Forest Service lands.[32] Project areas are considered "restored" when the mechanical vegetation treatment is completed. In some cases, habitat modification was considered mitigation for loss of sage grouse habitat in other locations. In these cases, project funding supported habitat loss for sage grouse. There are no factual comprehensive records on the impact of this mitigation on sage grouse populations. With tens of millions of dollars being spent each year, these "restoration" projects amount to a serious influence on sage grouse numbers. This DEIS does not assess the impacts of these land treatments on sage grouse populations. For this reason, the environmental analysis of this DEIS is inadequate.

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[29] Lanner, Ronald. 2012. Commentary, how did we get it so wrong? Society of American Foresters. Journal of Forestry 110(7):404

[30] Catlin, James, Emanuel Vasquez, Allison Jones. 2012. Piñon- juniper forest and the sagebrush steppe,

[31] https://www.sciencedirect.com/science/article/pii/S1550742416300811)//watershed.utah.gov/

[32] Utah Division of Natural Resources. 2024. Watershed Restoration Initiative Annual Report FY23

Buffer Distances

For buffer distances, Utah and some other states cite the USGS 2014 review titled Conservation Buffer Distance Estimates for Greater Sage Grouse.[33] This review of studies noted a range of buffer distances from 1km to 5km. For Utah, BLM has chosen the lowest number, 0.6 mile buffer. In a study popular with land management agencies and cited in the USGS 2014 review, Wallenstad and Schladweiler (1974) noted 76 percent of nesting sage grouse were within 1 km of a lek (0.6 mi). The 1-km (0.6-mi) buffer used in many management efforts was based upon this research and has been widely adopted. Ignored by BLM, the study just cited to support 0.6 mi buffer actually recommended a buffer of 1.5 miles.

Further, the choice of a 0.6 mile buffer size ignores more current scientific information and, even under its own description, would leave 25% of the population of nesting grouse unprotected. This is a serious shortcoming if the population decline is to be reversed. In making the choice for a 0.6 mile buffer, BLM failed to meet the obligation of applying the best scientific information in making decisions. BLM's choice for this buffer size violates the U.S. Department of Interior policy for scientific integrity.[34] BLM ignored more relevant and current studies thus their process was not scientifically robust.

Sagebrush habitat characteristics monitoring standards.

Roughly a decade ago, BLM adopted measurable indicators for sagebrush habitat necessary in order to meet the needs of sage grouse. The published scientific paper that describes these characteristics is found in Table 3 in Connelly et al. (2000).[35] These characteristics describe the minimum average height and percent of canopy cover that shrub, grasses and forb species should possess for habitat to be considered to meet necessary standards. Table 3 is reprinted here.

BLM has approved field monitoring methods that apply the standards shown in Table 3 in the field.[36] The methods used in the field include gathering point data along a transect using the line point intercept method[37] which measures the canopy cover and height of shrubs, grass, and forbs. The method includes measuring the height of each line point intercept point on the tape

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[33] Manier, D.J., Bowen, Z.H., Brooks, M.L., Casazza, M.L., Coates, P.S., Deibert, P.A., Hans er, S.E., and Johnson, D.H., 2014, Conservation buffer distance estimates for Greater Sage-Grouse—A review: U.S. Geological Survey Open-File Report 2014–1239, 14 p., http://dx.doi.org/10.3133/ofr20141239.

[34] https://www.doi.gov/scientificintegrity

[35] Connelly, J. W., M. A. Schroeder, A. R. Sands, and C. E. Braun. 2000. "Guidelines to manage sage-grouse populations and their habitats." Wildlife Society Bulletin 28(4): 967–985.

[36] Stiver, S.J., Rinkes, E., Naugle, D.E., Makela, P.D., Nance, D.A., Karl, J.W. 2015. Sage-grouse habitat assessment framework: multi-scale habitat assessment tool. Technical Reference 6710-1. Bureau of Land Management and Western Association of Fish and Wildlife Agencies, Denver, Colorado.

[37] Herrick, J.E., 2005. Monitoring manual for grassland, shrubland and savanna ecosystems. https://www.blm.gov/sites/default/files/docs/2022-04/TR_1734_8_vol1_508.pdf

for grass, forbs and shrubs.[38] Data collected by the 2015 Sage-Grouse Habitat Assessment Framework (TR 6710-1) measured average perennial grass heights.

These entries are then added to a national data set for Assessment, Inventory and Monitoring (AIM).

But by 2021, things changed and BLM no longer measured average perennial grass heights. Noting that too many areas failed to meet the average perennial grass height standard in Table 3, BLM decided to adopt another monitoring method. Updated in 2021, Technical Reference 1734-8 now uses the disc method to measure only a few of the highest grass plants. This disc method does not measure average perennial grass height. Note that the 2015 HAF Technical Reference 6710-1 still recommends the correct method for determining perennial grass height, easements of height of grass at each point in the line point intercept transect.

Habitat degradation from livestock grazing can affect perennial grasses and forbs, and as a result, the standard for grass and forbs are the most important. In the 2021 monitoring summary, BLM presented the past five years of data on habitat conditions range wide. Using the updated methods in most cases, BLM found that sagebrush canopy and height meet the standards.

In the Monitoring Report for 2015–2020[39] for Utah, only 4% of the habitat in PHMA habitat failed to meet the grass canopy cover and height requirements. This is quite surprising since independent field work has found at numerous sites in Utah that average perennial grass heights failed to meet the standard.[4041] BLM's results may be explained by the methods BLM used to assess perennial grass height which were different from the recommendations by BLM in Technical References for estimating average height for perennial grasses.

As noted earlier, BLM no longer measures average perennial grass height but uses another method adopted from an agricultural pasture land inventory method,[42] BLM now measures the highest grass found in a six inch circle at a number of locations along the transect. BLM does not assess the average grass height within that six inch circle (disc) but just the highest grass plant. As a result, the average height of perennial grasses are not assessed.

Unfortunately, these data are then used to populate the AIM database and incorrectly labeled "average" grass heights. The result is that the data BLM is using to see if standards are met for

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[38] Stiver, S.J., E.T. Rinkes, D.E. Naugle, P.D. Makela, D.A. Nance, and J.W. Karl, eds. 2015. Sage-Grouse Habitat Assessment Framework: A Multiscale Assessment Tool. Technical Reference 6710-1. Bureau of Land Management and Western Association of Fish and Wildlife Agencies, Denver, Colorado. Pages 92-96

[39] Herren, V., E. Kachergis, A. Titolo, K. Mayne, S. Glazer, K. Lambert, B. Newman, and B. Franey. 2021. Greater sage-grouse plan implementation: Rangewide monitoring report for 2015–2020. U.S. Department of the Interior, Bureau of Land Management, Denver, CO

[40] Catlin. 2013. Duck Creek and adaptive management: comparison of BLM's ocular utiliza tion survey with other methods and data. Submitted to BLM.

[41] Wild Utah Project. 2013. Appendices for the comparison of BLM's Duck Creek ocular utilization results with other data and met hods Submitted to BLM

[42] Natural Resources Conservation Service. 2024. National Resources Inventory Grazing Land On-site Data collection, Handbook of Instructions. https://grazingland.cssm.iastate.edu/files/inline-files/NRIGrazingLandHandbook2024_0.pdf

grass height use the wrong kind of data and ignore actual data for average grass height. Using measurements of the highest grass plant fails to identify all lands that don't meet standards.

Using the wrong method to gather the wrong data and then misrepresent it incorrectly is a serious abuse of the scientific method and clearly in violation of the science integrity. This represents a threat to the credibility and reputation of the Department of the Interior. Such a misuse of authority to degrade scientific integrity justifies filing a violation notification under the scientific integrity procedures.[43]

Alternative 5 expands the size of Habitat Management Areas in Utah to include more leks than were listed in the earlier plan. This is an improvement that will protect 90% of leks but falls short of the 96% protection Alternative 4 offers. Further, this alternative fails to include sage grouse populations in north eastern Utah. I recommend adding these Duchesne and Uintah Country populations to the PHMA and protecting these populations.

Grazing that protects habitat for sage grouse broods.

Sage grouse conservation needs to protect chicks in the breeding and brooding season. BLM recommends seasonal management actions that protect sage grouse during a year:[44] Provide management that protects habitat:

- In breeding, nesting and early brood-rearing habitat from Feb 15 – Jun 15
- In brood rearing habitat from Apr 15 – Aug 15
- In winter habitat from Nov 15 – Mar 15

BLM's BLM National Sage-Grouse Habitat Conservation Strategy of 2004 requires the agency to, "Use grazing practices that promote the growth and persistence of native shrubs, grasses and forbs needed by sage-grouse for seasonal food and concealment."[45] While the plan offers vague suggestions, the key grazing practices are not required to be followed to achieve this conservation goal. Such conservation oriented grazing practices require protecting perennial grass characteristics particularly during the breeding and brood process. I ask BLM to consider an alternative that limits livestock grazing in order to protect sage grouse chicks in the brood-rearing period. In these Utah land use plans, I ask BLM to revise the grazing permits in sage grouse areas to limit turnout of livestock in sage grouse areas. As a minimum, BLM should delay livestock grazing in brood-rearing habitat until after the 15th of August.

Out of the 1,319 (RIME 2012) allotments that BLM manages in Utah, 478 active BLM allotments include sage grouse habitat. In 2015, BLM had determined 78 of these allotments do not meet Rangeland Health Standards. 98 of active BLM allotments with sage grouse have not been assessed to determine if they meet these standards. In Utah BLM allotments with sage grouse habitat, BLM has renewed the grazing permit for 756 allotments in Utah (57%) without any

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[43] Department of the Interior. 2014. Scientific Integrity Procedure Handbook. 305 DM 3

[44] BLM 2024 SG plan EIS, Volume 3, 2-UT-14

[45] BLM. 2024. SG planning amendment EIS, Volume e, 15.1.5

management changes at all whatsoever, under the 2000 Congressional Appropriations Rider. Renewal of grazing permits using the appropriations rider perpetuates grazing use and prevents changes needed to conserve sage grouse. I ask BLM to include in the preferred alternative a requirement that NEPA be conducted, with public involvement, on renewal of any grazing permit with sage grouse.

This 2024 DEIS does not offer as an alternative for BLM to conduct rangeland health assessments on unassessed allotments, nor to require changes in grazing management required to restore allotments not now meeting standards. The preferred alternative should require all allotments be assessed to see if they meet sage grouse needs and, where identified, suggest needed restoration.

Volume 3 of this DEIS describes "habitat objectives for greater sage-grouse" (pg 2 UT 65-67). By choosing objectives that make current degraded conditions as an objective, these DEIS objectives often fail to note degraded habitat and incorrectly assess if the standards on Connelly et al (2000) are met. This is a very serious problem and the DEIS does not offer justification. Absent from the DEIS, BLM claims to use unpublished selected data which has not been peer reviewed to support their numbers. Use of hidden selected data to support policy is a violation of the scientific integrity policy. Prior to use, these data should be peer reviewed by independent scientists without conflicts of interest. The habitat objectives should be revised in the preferred alternative to reflect Table 3 of Connelly et al (2000).

Using available precipitation data[46] and ecological classifications for mesic and xeric habitat,[47] much of the sage grouse habitat in Utah should be classified as mesic and the habitat characteristics for this habitat applied. Unfortunately, this DEIS does not apply these criteria instead incorrectly applying criteria for arid lands. Few sage grouse areas in Utah qualify as arid. The table now incorrectly shows the requirement of perennial grass cover and forbs >10% grass and >5% forbs. For mesic areas such as those mostly found in Utah, this should be >15% perennial grass and >10% forbs. This constitutes a serious error and correction is required. I ask that these tables be modified and correctly apply these standards.

The 2024 plan amendment for Utah presents habitat objectives for greater sage-grouse in low, mid, and high habitat objective zones. For perennial grass cover, all zones call for percentage cover that is well below the required standard. Incorrectly Connelly et al (2000) is cited to support this. This citation should be deleted from the DEIS. These low, mid and high zones are without valid independent scientific study, are very confusing to managers, violate agreed to standards, and should be eliminated from the plan.

Missing from the Utah habitat objectives are standards for the average heights for perennial grasses and forbs. As a result, any height of perennial grass and forbs can meet these DEIS

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[46] Pinyon Ecology Research Group, 2013. Colorado Plateau annual precipitation map. Northern Arizona University.

[47] Woods, A.J., Lammers, D.A., Bryce, S.A., Omernik, J.M., Denton, R.L., Domeier, M., and Comstock, J.A., 2001, Ecoregions of Utah (color poster with map, descriptive text, summary tables, and photographs): Reston, Virginia, U.S. Geological Survey (map scale 1:1,175,000). Summary Table : Characteristics of the Ecoregions of Utah

objectives. This is one of the most egregious omissions in this process. In our experience, this is often the most common objective that cannot be met in most grazed sage grouse habitat areas.

This is a serious shortcoming in management direction and should be corrected. The average height for perennial grass should be 18 cm and this should be added to the tables just mentioned. Further the assessments to determine average perennial grass height should require following using the line point intercept method to measure height described in TR-1734-8 volume 2, page 82. Current methods used fail to assess the needed information to determine if the Connelly et al. (2000) sagebrush characteristic requirements in Table 3 are met.

Idaho

Idaho is unique among other states to have three categories of habitat management areas. In addition to PHMA and GHMA, they have IHMA. These are defined as "Important Habitat Management Area (IHMA). High value habitat and populations that provide a management buffer for the PHMAs and connect patches of PHMAs."[48] PHMA are described as" Areas that have been identified as having the highest conservation value to maintaining sustainable Greater Sage-Grouse populations; they include breeding, late brood-rearing, and winter concentration areas."

Earlier plans generally give mostly the same management to IHMA as for PHMA. However, IHMA are open for saleable minerals (gravel pits, for example) and PHMA are closed but with exceptions. For wind and solar, PHMA are closed for leases and IHMA are open with stipulations. For a buffer distance from disturbances, IHMA buffers are significantly smaller than for PHMA. There is no scientific basis for smaller buffers offering adequate protection for sage grouse. The cited source for this fails to provide verified scientific justification for this.[49] For this reason, I ask BLM to use the same buffer distances for PHMA in IHMA areas.

The 2024 Idaho plan amendment proposes to reduce buffers in PHMA and IHMA areas for minor linear features while retaining a 3.1 miles for major buffers (Appendix 19). This 2024 plan increases some buffer distances for IHMA areas and I support this.

For livestock grazing, the earlier Idaho BLM plan (2018) called for a number of needed assessments of allotment conditions. However, it is unclear if BLM will conduct a NEPA analysis, environmental impact review, and public involvement on grazing permit renewal. This 2024 plan should require such a NEPA analysis as part of any sage grouse habitat review and include public involvement. No grazing permit with sage grouse should be allowed to renew the permit using the appropriations rider.

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[48] BLM 2018. Idaho greater sage-grouse draft RMP amendment

[49] Manier, D.J., Bowen, Z.H., Brooks, M.L., Casazza, M.L., Coates, P.S., Deibert, P.A., Hanser, S.E., and Johnson, D.H., 2014, C onservation buffer distance estimates for Greater Sage-Grouse—A review: U.S. Geological Survey Open-File Report 2014–1239, 14 p., *https://dx.doi.org/10.3133/ofr20141239.*

In BLM's Rangewide Monitoring Report for 2015–2020,[50] BLM in Idaho reported, "For PHMA, IHMA, and GHMA the perennial grass cover and perennial grass and forb height for nesting." Perennial grass height and cover increased in this time period according to the monitoring report. Sagebrush characteristics were considered suitable and livestock grazing met "objectives." In this time period only one hard trigger threshold in 2018 was crossed due a fire. All other areas were found to meet hard and soft triggers.

This rosy report seems at odds with other information. Coates et al (2023) found that warnings and cautions should have led to actions in a majority of sage grouse clusters in Idaho. See the Idaho portion of Figure 8.1. A more glaring problem is that the Idaho sage grouse population continues a steady and serious decline even when monitoring reports most places as in good condition.

[50] Herren, V., E. Kachergis, A. Titolo, K. Mayne, S. Glazer, K. Lambert, B. Newman, and B. Franey. 2021. Greater sage -grouse plan implementation: Rangewide monitoring report for 2015–2020. U.S. Department of the Interior, Bureau of Land Management, Denver, CO.

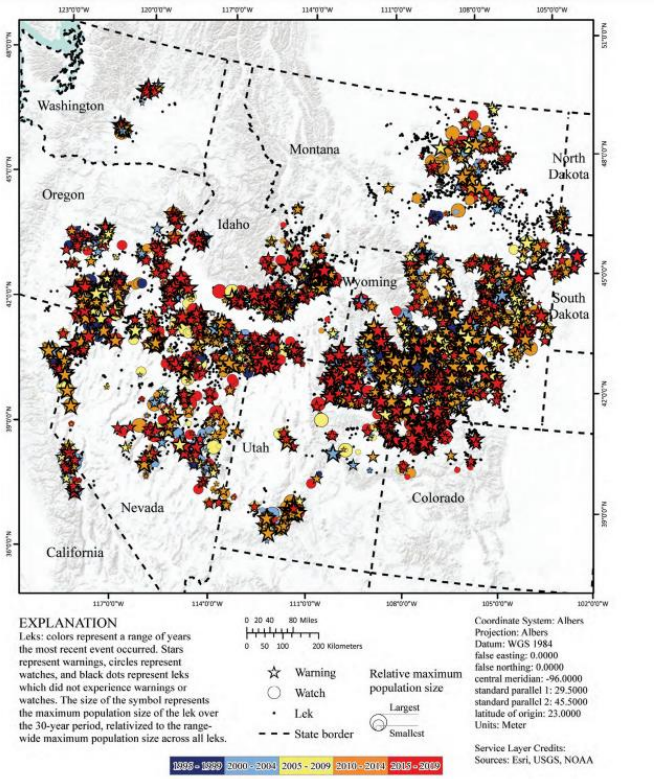

Figure 8.1. Spatial and temporal depiction of range-wide watches and warnings of greater sage-grouse (*Centrocercus urophasianus*) population declines at the lek scale using a targeted annual warning system that was developed for climate cluster stability within the western United States from 1990 to 2019. Map image is the intellectual property of Esri and is used herein under license. Copyright © 2020 Esri and its licensors. All rights reserved.

An additional source of concern is the fact that most of the allotments in Idaho with sage grouse have failed rangeland health standards. See PEER's 2024 online map for BLM Rangeland Health Status - The Significance of Livestock Grazing on Public Lands, BLM's allotment Land Health Standards (LHS) assessment records (1997 - 2023).[51] In areas where sage grouse are found, most of the allotments either have not had rangeland health assessed or where assessed, fail to meet standards. This indicates a serious problem for the habitat conditions that sage grouse require.

The information for Idaho is conflicting and needs to be resolved before specific management actions can be taken.

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[51] https://mangomap.com/peer/maps/144094/BLM-Rangeland-Health-Status-(2024)---The-Significance-of-Livestock-Grazing-on-Public-Lands?_gl=1*1qr550n*_ga*MzQ0NDY1NDUyLjE3MTUwNDA2MDQ.*_ga_05P1NCLCQP*MTcxNzk2MDIyNi40LjEu MTcxNzk2MDI2MC4wLjAuMA..#

In summary I recommend for the preferred alternative the following:

1) Designate ACECs for PHMA, IHMA, and GMHA areas.

2) Exclude sage grouse ACECs from vegetation management projects. End forest and shrub conversions using chemical, fire, and mechanical means.

3) Replace the current hard and soft trigger adaptive management with the Targeted Annual Warning System was presented in Coates et al. (2023)

4) In habitat that meets the sagebrush habitat characteristics (Connelly et al 2000), delay grazing in breeding and brood areas until mid-August.

5) For habitat that fails to meet sagebrush characteristics, rest the area from grazing until recovery is achieved.

When renewing a grazing allotment, conduct a rangeland health assessment, conduct a range carrying capacity that maintains sage grouse habitat needs, and induces NEPA and public involvement. Do not use the appropriations rider to renew grazing permits in sage grouse habitat

Wyoming

Wyoming is the last stronghold for Sage Grouse

Wyoming has the largest population of sage grouse in the United States and supports 35-40% of the range-wide population. Wyoming lies within the core of the historic and present distribution of sage-grouse, an iconic inhabitant of the sagebrush steppe. Over the past seventy years, there has been a general decline in the total number of sage-grouse across their range.

The U.S. Fish and Wildlife Service (USFWS) has acknowledged that energy development and associated infrastructure is a predominant threat to grouse and that minimizing new surface disturbance is key to maintaining a viable population[52].

A 2016 study in Wyoming has shown that oil and gas development adversely impacts sage-grouse populations by reducing and fragmenting habitats, reducing bird survival rates, and disturbing the birds to the point that most no longer use developed areas after a few years[53].

Wyoming's Golden Triangle

The region north of Wyoming Highway 28, situated between the Big Sandy River and the Sweetwater River, is locally referred to as the "Golden Triangle". It boasts the highest

[52] (USFWS, 2016)

[53] Walker et al., "Greater Sage-Grouse Population Response to Energy Development and Habitat Loss."

concentration of sage grouse in the world, with the only lek in North America recording over 300 male sage grouse in the last decade. The surrounding leks also support impressive counts, with over 100 males, four times the statewide average during population peaks. This area is also winter range for over a thousand elk, mule deer, and pronghorn and contains a portion of the Red Desert to Hoback mule deer migration corridor.

The Greater Yellowstone Climate assessment[54] has concluded that this landscape is most likely to remain in sagebrush habitat in the West as climate change brings pressure to bear on sagebrush systems elsewhere. Truly, this area is the "Core of the Core" for sage grouse. Though known to local wildlife enthusiasts and biologists, this area is not officially designated. The Golden Triangle in Wyoming deserves permanent protection for its world-class wildlife values.

Support for Alternative 3 & 6 with ACEC protections

The best Alternative for Wyoming sage grouse is Alternative 3. As stated above all habitat management areas would be managed as Priority Habitat Management Areas (PHMA), closing them to new mineral development and livestock grazing and excluding them from right-of-way (ROW) designation. Of all the alternatives, Alternative 3 does the most to protect sage grouse and the 350 different species of wildlife that depend on Wyoming sagebrush steppe.

Alternative 3 and Alternative 6 contemplate the designation of Areas of Critical Environmental Concern (ACEC) to install special management practices. I support parts of both Alternative 3 and Alternative 6 with the inclusion of newly designated ACECs to provide protected status to important areas with wildlife values. In Wyoming, two proposed ACECs that appear in the draft plan will protect the best remaining, irreplaceable intact sagebrush habitat. These places are the Golden Triangle, and portions of Wyoming's Northern Red Desert.

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Little Sandy ACEC[55]

The proposed Little Sandy ACEC is situated in south central Wyoming within one of the last remaining high-elevation deserts in the United States. Located north of Highway 28, the 367,362-acre area represented in the ACEC proposal encompasses a largely intact sagebrush-steppe ecosystem bisected by perennial and ephemeral drainages, as well as aspen communities and conifer patches in the foothills that slope into the Wind River Mountains to the north. The proposed ACEC wholly overlaps with an area referred to by wildlife managers as "the Golden Triangle", recognized locally for its unparalleled biodiversity richness and important wildlife habitat. This area supports the healthiest remaining greater sage-grouse populations in the world, with 800 male sage-grouse documented across several 'super' leks in the breeding season, surrounded by important nesting and chick-rearing habitats[56]. These wildlife and ecological values are uniquely vulnerable to impending threats not prohibited under current

[54] Hostetler et al. a
[55] Little Sandy ACEC nomination
[56] https://wyofile.com/blm-leases-23k-acres-in-sage-grouse-golden-triangle/

management, making the proposed Little Sandy ACEC especially worthy of consideration for designation.

Red Desert ACEC[57]

The proposed Red Desert ACEC represents some of the finest intact high-elevation sagebrush steppe in the contiguous United States. Located south of Highway 28 in Wyoming, the 153,763 acres represented in the proposal would help connect a patchwork of currently designated and undesignated public lands within a broader landscape clearly deserving of protections. This landscape stitches together a matrix of badlands, buttes and rolling sagebrush terrain, bordered by currently designated Wilderness Study Areas (WSAs), Lands with Wilderness Characteristics (LWCs), and other ACECs. The region is unique in that the Continental Divide splits and rejoins in this area, creating the Great Divide Basin—into which water collects rather than ultimately flowing to either the Pacific or Atlantic. This unique setting, as well as numerous ecological values vulnerable to impending threats, make the proposed Red Desert ACEC especially worthy of consideration for designation.

Please incorporate into the final plan these places of high significance in Wyoming:

1) The proposed Little Sandy Area ACEC, which encompasses the Golden Triangle
2) The proposed Red Desert ACEC, which protects vital high desert, a unique sane dune environment, and sagebrush-steppe habitat.

Protection for sage grouse, a keystone species, means sustainable, biodiverse landscapes for Wyoming for years to come. As mentioned, this fragile greater sage grouse habitat sustains a wide variety of species, including mule deer, pronghorn, and elk' and songbirds like Brewer's sparrow and green-tailed towhee, as well as larger migratory species. The grasses and forbs provide shelter to songbirds, pygmy rabbits, and reptiles.

Recommendations

In addition, I recommend the following specific management prescriptions to ensure the health of Wyoming sage grouse and the protection of their vital sagebrush habitat in line with the 2023 State of Wyoming Sage Grouse Strategy Plan:

- Permanent Lek Protection
    - Monitor active leks
    - No development five miles distance from lek
    - Seasonal provisions to limit disturbance of lek
- Protect Core Habitat Areas
    - Designated corridors
    - Habitat conservation easements
- Focus on Habitat Connectivity

[57] Red Desert ACEC Nomination

    - Habitat enhancement measures
    - Preserve sage grouse access to quality habitats
- Preserve Habitat Quality
- Preserve Habitat With Potential
- Adopt Adequate Regulatory Mechanisms

Given the nature of the species, it is best for Wyoming to focus on maintaining and enhancing bird populations where they are currently thriving. The 2023 WY State Grouse Plan stated that moving birds from one area to another has only been successful if there are already resident birds present. The most effective approach is to preserve and improve the populations and habitats where the birds are currently located and have historically thrived. Alternative 3 offers the best opportunity for preserving habitats and maintaining stable sage grouse populations. Alternative 6 would also support the necessary measures for the longevity and overall health of sage grouse in Wyoming.

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JUN 03 2024
VALE DISTRICT BLM

June 3, 2024

To whom it may concern;

These comments are in regard to the latest proposed changes to the GRSG ARMPA. Through our cattle company, my wife and I own grazing permits in Southeast Oregon, including the Anderson permit. The ACEC/RNA designations have been of particular concern to us over the last several years. The Toppen Creek Butte RNA is in one of our grazing pastures.

After hours of studying the latest proposed alternatives, the Alternative 5 proposed management changes are my preferred choice. These are some of my reasons.

1. The 2.5 miles of new fence, instead of 6 miles, will be much more wildlife friendly. We have bighorn sheep, elk, sagegrouse, deer, and antelope. From a cattle management perspective, it eliminates a tremendous bottleneck the original RNA fence would create.
2. The Alt. 5 area to be fenced is in an area that did not burn in the 2013 Slaron Creek Fire. The 1700 acres of the RNA that did burn in this fire ceased to fall under the Special Designation Objective definition.
3. The area to be fenced will be simpler to maintain and study, and I believe

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the chances of this getting done are greater with the smaller exclosure.

4. Although the grazing utilization is historically light, it will continue to help minimize the fine fuel load to reduce the risk of wildland fires.

In conclusion, please take these comments into consideration when you make your decision. I personally spend more time in the Toppen Creek Butte area every year than all other people combined. We have a sincere interest in this area.

Thank you,

Scott R. Gooch

Rocking Club Cattle, LLC
Scott + Kaila Gooch
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ROBERT GHIGLIERI
Administrator

June 12, 2024

Director Stone-Manning
Bureau of Land Management
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Director Stone-Manning,

The Nevada Division of Minerals (NDOM) wishes to provide public scoping comments in response to the Bureau of Land Management's (BLM) 2024 Draft EIS for the 2021 Greater Sage-Grouse Land Use Plan Amendments (DRMPA/EIS). We understand and appreciate the purpose and need of this DRMPA/EIS to ensure management on BLM-administered lands respond to changing land uses, improve efficiency and effectiveness of Greater Sage-Grouse (GRSG) management, provide for consistent conservation based on ecological boundaries, and provide the BLM with locally relevant decisions that accord with rangewide GRSG conservation goals.

Both at the State and Federal levels, numerous efforts are underway to fulfill existing orders to guarantee U.S. economic prosperity; national security; a sustainable climate future; along with diverse, resilient, and secure critical mineral supply chains (Executive Order 14017[1], Executive Order 14057[2]). Specific to Nevada, local efforts are also focused on fulfilling mandates put forth by Governor Joe Lombardo in Nevada Executive order 2023-007[3] and Nevada-Ontario MOU[4] to promote and facilitate bilateral trade and investment in minerals and green energy projects including but not limited to mining development and renewable energy; develop sufficient in-state electric generation resources (solar, wind, and geothermal along with necessary

[1] Executive Order on America's Supply Chains https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/executive-order-on-americas-supply-chains/
[2] Executive Order on Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/08/executive-order-on-catalyzing-clean-energy-industries-and-jobs-through-federal-sustainability/
[3] Executive Order 2023-07 Oder Establishing the Nevada Energy Policies Objectives https://gov.nv.gov/Newsroom/ExecOrders/2023/Executive_Order_2023-007/#:~:text=Nevada%20will%20develop%20sufficient%20in,supplies%20during%20peak%20usage%20periods
[4] Nevada-Ontario Economic Cooperation Memorandum of Understanding https://goed.nv.gov/newsroom/nevada-ontario-agree-to-focus-on-critical-minerals-and-green-energy/

Commission on Mineral Resources

Nigel Bain; *Large-Scale Mining*
Robert Felder; *Exploration and Development*
Randy Griffin; *Small-Scale Mining and Prospecting*
Josh Nordquist, Chairman; *Geothermal Resources*
Stephanie Hallinan; Large-Scale Mining
Arthur Henderson; *Oil and Gas*
Mary Korpi, *Public at Large*

transmission); along with attracting new investments and providing businesses and entrepreneurs opportunities for new markets for their products and services.

Decisions affecting such large areas of land, especially in states like Nevada, composed of 86% federal land, must be properly and methodically analyzed in detail to ensure states, counties, and local communities and their associated economies are not negatively impacted. Final management decisions selected from this DRMPA/EIS should align more closely with the 2019 Nevada Greater Sage-grouse Conservation plan[5] (2019 Nevada Plan). Nevada has been a leader in sage-grouse conservation and as such utilized this expertise and input from many disciplines for over a decade to construct the 2019 Nevada Plan. The goal of the state plan "is to provide for the long-term conservation of sage-grouse by protecting the sagebrush ecosystem upon which the species depends." The 2019 Nevada Plan's guiding principles serve as a balanced foundation to achieve the goals which include not only conservation but maintaining the economic vitality of the state, broad reaching collaboration with respect to conservation and management, monitoring, and adaptive management.

These inconsistencies and changing data indicate that this DRMPA/EIS was rushed to meet an artificial deadline under which the consequences stemming from decisions relating to mineral resources have not been scrupulously analyzed nor articulated. There are many decisions within the DRMPA/EIS that will have significant impacts to anthropogenic activities, which only makes up less than one percent of GRSG habitat loss, as well as impacts to foundational efforts underway to meet State and Federal goals. The deficient mineral resource impact reviews in this DRMPA/EIS may slow the U.S. green energy transition and weaken our national security by ensuring dependence on foreign sources of critical minerals. Exploration for and production of critical minerals – and progress towards securing the nation's critical mineral supply chain – may be negatively affected by land use decisions stemming from this DRMPA/EIS without the proper review of mineral resources present in lands that will be subject to management decisions associated with the habitat management areas, special land designations and proposed withdrawals.

NDOM's major concerns center around:

1. Alternatives including the preferred alternative do not align with goals and objectives central to the 2019 Nevada Greater Sage-grouse Conservation Plan;
2. Ambiguous and unclear alternatives, data, and maps that inhibit detailed analysis of potential impacts which does not comply with Title 40 policies, procedures or recommended format;
3. Discrepancies, confusion, and conflicting presentation of information within the numerous tables provided for the Comparison of Alternatives which clearly do not comply with the "clear presentation of the alternatives" as required under the Recommended Format section of Title 40 CFR 1502.10;

[5] 2019 Nevada Greater Sage-grouse Conservation Plan
https://sagebrusheco.nv.gov/uploadedFiles/sagebrusheconvgov/content/Resources/State%20Plan%20document_June%202015.pdf

4. Absence of data pertaining to mineral production in Nevada within the Affected Environment section and the lack of understanding or inquiry pertaining to statutory mandates requiring the recordation of such data;
5. Implications stemming from the designation of Areas of Critical Environmental Concern (ACEC) including unintended consequences; and,
6. The absence of any representation relating to the volume of active mines, mining claims, or fluid minerals leases that may be impacted by proposed Habitat Management Areas (HMAs), special land designations, or recommended withdrawals even if the impact is indirect.

We appreciate your time and willingness to review our comments detailed below.

1. Alternatives including the preferred alternative do not align with goals and objectives focal to the 2019 Nevada Greater Sage-grouse Conservation Plan

Any land use allocation with exclusion criteria is not in line with the 2019 Nevada Greater Sage-grouse Conservation plan policy to "avoid, minimize, mitigate".

- As currently implemented and outlined in the 2019 Nevada Plan, avoid does not allow for proponents to "buy" themselves out of impacts.
- Avoid, minimize, and mitigate allows the state and proponents to carefully assess the project emphasizing avoidance and allowing for creative solutions and technologies to be developed which could result in avoidance or minimizing of impacts.
- An unintended consequence of utilizing "exclusion" is the de facto "exclusion" of creative solutions and development of technologies which could allow for better mineral resource development and extraction methodologies but also assist in species and habitat conservation.

Exclusion sends a message to proponents interested in investing in mineral resource development in Nevada that development is not welcome.

- This will not only have negative impacts to state and federal goals and objectives, but also to state, county, and local economies which receive many benefits including employment, filing fees, net proceeds of mineral tax, education excise tax, education fees from leasing, and other local taxes from both direct and indirect activities stemming from mineral resource exploration and development.
- Below are statistics on 2023 Nevada Mining Taxes[6]:
    - 4.5% of Nevada's GDP (2023) General health of an economy
    - $12.7B ($8.4B direct) in total economic output
    - 35,649 Employment
    - $3B Salaries and Wages ($1.6B direct)
    - Taxes Paid
    - $389.0M Annuel Taxes Paid
    - $142.2M Net Proceeds of Minerals

[6] The Role of Nevada's Mining Industry 2023 https://www.nevadamining.org/wp-content/uploads/2023/09/2023-NVMA-Presentation_v13-FINAL-NVMA.pdf

- $122.4M Sales and Use Tax
- $67.3M Gold and Silver Excise Tax
- $36.2M Property Tax
- $20.8M Modified Business Tax

Exclusion and withdrawals

- Under Alternative 3, all areas managed for GRSG would be Primary Habitat Management Areas (PHMA) with extensive exclusion criteria, NDOM does not in any way support this alternative, it would be detrimental to the state of Nevada.
- Alternative 3 recommends all PHMA for withdrawal from location and entry under the Mining Law of 1872, NDOM again does not in any way support this alternative or the recommendation for withdrawal as it would severely impact if not destroy mineral resource exploration and development in the state.
- Furthermore, Alternative 3 does not align itself with State or local plans and would have impacts that have not even remotely come close to being analyzed during this process.
- Alternative 1 recommends withdrawal of the 2015 Sagebrush Focal Areas (SFA), a withdrawal that is also not supported by NDOM due to high mineral resource potential (including critical minerals such as copper) as defined in the 2016 USGS assessment completed on these areas and the 9,000+ mining claims currently located within the SFA boundaries.

Exclusion bias

- Under the preferred alternative Fluid Minerals, including geothermal, would be subject to no surface occupancy (NSO) in PHMA where solar and wind are only subject to avoidance.
- The Biden administration has proposed to expand tax credits beyond wind and solar to include geothermal energy and has recognized geothermal as a source of clean renewable energy, exclusionary management decisions would hinder geothermal development[7].
- Geothermal plants require a much smaller land footprint than renewables such as solar and wind. Currently, geothermal power projects on BLM land require an average of 1.6 acres per MW of nameplate capacity. This compares favorably to solar (3–6 acres per MW) or wind (30–45 acres per MW).[8]
- If solar energy is subject to avoidance and not NSO in PHMA, geothermal should be subject to the same stipulations.

2. <u>Ambiguous and unclear alternatives, data, and maps that inhibit detailed analysis of potential impacts which does not comply with Title 40 policies, procedures or the recommended format.</u>

[7] Biden administration expands tax credits beyond wind, solar. https://www.reuters.com/business/energy/biden-administration-expands-tax-credits-beyond-wind-solar-2024-05-29/

[8] Robins, Kolker, et. All; NREL Transforming Energy, *2021 U.S. Geothermal Power Production and District Heating Market Report*

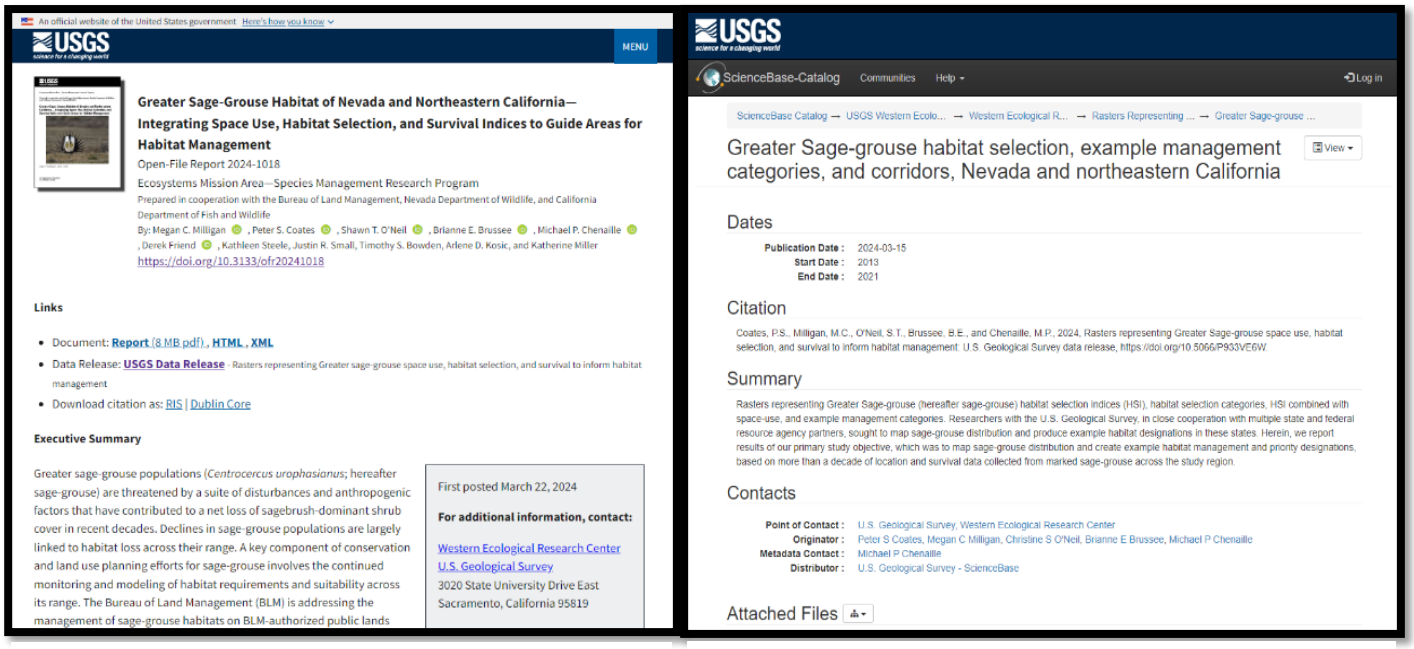
NDOM has several concerns centered around data and maps accompanying this DRMPA/EIS as detailed below. The presentation of maps and data during the public comment period for this DRMPA/EIS does not appear to comply with the purpose and policy of NEPA as each relate to public participation presented in Title 40, and furthermore seems to justify the need for a supplemental DIES. NDOM is not opposed to the 2024 HMA updates however, NDOM believes publication of this DRMPA/EIS should have either been postponed by a week to incorporate the new dataset in accompanying maps; or the public notification regarding the availability of the new HMAs on the BLM's National NEPA Register site (Eplanning) should have been made the day it was available. Though it has been stated in cooperator meetings, that the HMA boundaries should not matter and what is important are the decisions that will be made within them. However, there is no way to evaluate any impacts in the absence of a clear and accurate spatial representation of the human environment it will affect. It is logical to assume that the leads for this effort were aware of the data and report publication date since one is a co-author on the report and associated dataset, and as such could have delayed publication of the DRMPA/EIS and allowed for the public to use the best available science to inform their decisions as well.

Overwriting of GIS data on Eplanning without notification or explanation:

- The DRMPA/EIS associated maps (Volume 2: Appendix 1. Maps), and associated GIS data were first published March 14, 2024.
- On March 20, 2024, all GIS data for Alternatives 3, 4, 5, and 6 were overwritten.
- While it does appear that changes within these files were related to file structure and not the actual data within, it is not clear if that was the case.
- There is no way the public would have been aware of this change or why it occurred, as neither were ever disclosed on the Eplanning site.
- While it is understood that providing GIS data is not required, publishing and then overwriting data put forth for public analysis without an explanation creates confusion, consumes the time of the individuals completing analytical reviews since they must duplicate their efforts, and does not in any way facilitate public involvement as required in Title 40 CFR 1500.2 (d).
    - For example, if a member of the public had downloaded the data on March 19th, ran their analyses, and revisited the site on the 21st, it would have resulted in multiple discrepancies and no explanation why the data was overwritten and whether their analyses remained valid.
- The posting of a document or circulation of an email stating the nature of the update would eliminate any ambiguity, facilitate public involvement, and lead to transparency.

USGS published HMAs were not included as part of the document but were available the day after DRMPA/EIS publication and the beginning of the comment period; a clear indication that this document appears to have been extremely rushed to meet an artificial timeline.

- Appendix 3, page 3-12, acknowledges that the HMAs the BLM intended to utilize for decisions related to this DRMPA/EIS were not published in time for inclusion (complying with Title 40 CFR 1502.22), however, according to the USGS Science Base Catalog, the data (GrSG_Example_Management_Areas.tif) were published on March 15, 2024, which was **one day after this draft DRMPA/EIS was made available to the public for comment** (Figure 1).
- The report associated with the GrSG_Example_Management_Areas.tif was published on March 22, 2024, which was eight days after the comment period began (Figure 2).
- The notification regarding the publication of this data was not posted to the Eplanning site until May 24, 2024, or 71 days following the beginning of the comment period (Nevada-California New GRSG HMA Data Availablity_updated_508.pdf).
- This only gave the public 20 days to review this new data and analyze potential impacts before closure of the comment period.


An official website of the United States government Here's how you know
USGS
MENU
Greater Sage-Grouse Habitat of Nevada and Northeastern California—Integrating Space Use, Habitat Selection, and Survival Indices to Guide Areas for Habitat Management
Open-File Report 2024-1018
Ecosystems Mission Area—Species Management Research Program
Prepared in cooperation with the Bureau of Land Management, Nevada Department of Wildlife, and California Department of Fish and Wildlife
By: Megan C. Milligan, Peter S. Coates, Shawn T. O'Neil, Brianne E. Brussee, Michael P. Chenaille, Derek Friend, Kathleen Steele, Justin R. Small, Timothy S. Bowden, Arlene D. Kosic, and Katherine Miller
https://doi.org/10.3133/ofr20241018
Links
Document: Report (8 MB pdf) , HTML , XML
Data Release: USGS Data Release - Rasters representing Greater sage-grouse space use, habitat selection, and survival to inform habitat management
Download citation as: RIS | Dublin Core
Executive Summary
Greater sage-grouse populations (Centrocercus urophasianus; hereafter sage-grouse) are threatened by a suite of disturbances and anthropogenic factors that have contributed to a net loss of sagebrush-dominant shrub cover in recent decades. Declines in sage-grouse populations are largely linked to habitat loss across their range. A key component of conservation and land use planning efforts for sage-grouse involves the continued monitoring and modeling of habitat requirements and suitability across its range. The Bureau of Land Management (BLM) is addressing the management of sage-grouse habitats on BLM-authorized public lands
First posted March 22, 2024
For additional information, contact:
Western Ecological Research Center
U.S. Geological Survey
3020 State University Drive East
Sacramento, California 95819
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ScienceBase Catalog → USGS Western Ecolo... → Western Ecological R... → Rasters Representing ... → Greater Sage-grouse ...
Greater Sage-grouse habitat selection, example management categories, and corridors, Nevada and northeastern California
View
Dates
Publication Date : 2024-03-15
Start Date : 2013
End Date : 2021
Citation
Coates, P.S., Milligan, M.C., O'Neil, S.T., Brussee, B.E., and Chenaille, M.P., 2024, Rasters representing Greater Sage-grouse space use, habitat selection, and survival to inform habitat management: U.S. Geological Survey data release, https://doi.org/10.5066/P933VE6W.
Summary
Rasters representing Greater Sage-grouse (hereafter sage-grouse) habitat selection indices (HSI), habitat selection categories, HSI combined with space-use, and example management categories. Researchers with the U.S. Geological Survey, in close cooperation with multiple state and federal resource agency partners, sought to map sage-grouse distribution and produce example habitat designations in these states. Herein, we report results of our primary study objective, which was to map sage-grouse distribution and create example habitat management and priority designations, based on more than a decade of location and survival data collected from marked sage-grouse across the study region.
Contacts
Point of Contact : U.S. Geological Survey, Western Ecological Research Center
Originator : Peter S Coates, Megan C Milligan, Christine S O'Neil, Brianne E Brussee, Michael P Chenaille
Metadata Contact : Michael P Chenaille
Distributor : U.S. Geological Survey - ScienceBase
Attached Files

- The Nevada-California New GRSG HMA Data Availablity_updated_508.pdf provides links to the data and the report, from which members of the public must read the report to understand the 34 potential layers presented, yet the actual layer used is not one of the 34 potential layers and is titled "GRSG_ GrSG_Example_Management_Areas.tif" which is still labeled as an "example" instead of final or new GRSG HMA Data.
- Under alternatives 3-6, all acreages, analyses, and approximately 79 maps made available for public comment were generated using interim shapefiles described as "draft" HMA categories (i.e., Priority, General, and other) subject to BLM management as described in the 2024 Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement (2024 DRMPA EIS for Alternative x)" and were not recreated using the HMAs provided within the GRSG_ GrSG_Example_Management_Areas.tif.

- Appendix 3, page 3-12 states that the USGS provided BLM with draft results of the model for use in preparing the DRMPA/EIS range of alternatives and impact analysis ensuring the BLM was using the best science while preparing the document.
- Title 40 CFR 1500.1 (b) states that "NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA" and the unwillingness of the BLM to postpone publication of this document with the USGS data which they already had a draft of for public comment, by even a week, to make sure the public can utilize the best science available as well is in direct conflict with the stated purpose of NEPA.
- For 78% of the comment period, participating members of the public would have been analyzing the wrong HMAs unless they knew to watch the USGS site for the official publication of the new data.
- The rushed publication and delayed notification as to the updated USGS data conflicts with the policy of NEPA to encourage and facilitate public involvement in decisions which affect the quality of the human environment (Title 40 CFR 1500.2 (c).

Unclear/dynamic Habitat Management Areas:

- Nevada-California New GRSG HMA Data Availablity_updated_508.pdf page 2 states:
    - *"Finally, it is important to note that the GRSG 2015 Approved Resource Management Plan Amendment (ARMPA) includes Management Decision SSS 17, which states that BLM will update habitat management areas based on current science and data "to represent the most up-to-date spatial representation of GRSG habitat categories." Updating the spatial representation of HMA categories using the USGS 2024 publication is consistent with the 2015 ARMPA direction. Management Decision SSS 17 has not been changed through maintenance or amendments to the ARMPA and is not being considered for change in the current planning process. As such, considering the published USGS modeling results conforms with existing RMP management actions, as well as being compliant with the policy directing the BLM to use the best available science in its decision-making process."*
- This statement seems to indicate that the proposed HMAs for all alternatives would be updated to the 2024 HMA boundaries, or GrSG_Example_Management_Areas.tif, as published by the USGS.
- If the 2024 HMA boundaries are intended to apply to all alternatives which was indicated in the statement above, then the economic and affected environment analysis applicable to any of the alternatives is incomplete, which is actually stated in the Nevada-California New GRSG HMA Data Availability updated_508.pdf as follows:
    - "Updating the Draft RMPA/EIS with the USGS published data would result in some areas becoming HMA that were not analyzed as such in the Draft RMPA/EIS. This is limited to 41,936 acres of PHMA (or 0.24% of the HMA identified on BLM-administered lands), 233,840 acres of GHMA (1.35%), and 1,142,018 acres of OHMA (6.58%). These changes reflect consideration and

application of new GRSG information based on data received since publication of the Draft RMPA/EIS."
    - Consequently, this represents "new circumstances or information relevant to environmental concerns" and has "bearing on the proposed action or its impacts" which seems to warrant a supplemental EIS.
- If the 2024 HMA boundaries are intended to apply to all alternatives, then all maps presented in or with this DRMPA/EIS which include or are generated from HMA boundaries (Approximately 126) are not accurate and provide no means for analysis, and without clear alternatives to compare, there is no basis for a NEPA analysis.
- Had the BLM delayed the publication of this DRMPA/EIS, the delay would have circumvented this problem all together and aligned with the purpose and policy of NEPA.

Web maps not made available to the public, conflicts with the purpose of NEPA:

- It is understood that supplying or presenting geospatial data to inform NEPA reviews is not mandatory. Tools such as ESRI web maps, configurable web apps, and easily deployable hub sites, which have become readily available during the last few years, make it easier than ever.
- The BLM did provide geospatial data for all states, however utilizing the data requires the public to know how to use and have access to GIS software programs.
- The need to use GIS data sets for any kind of analysis relating to this DRMPA/EIS is critical as the maps provided in Appendix 1 are not high enough resolution to analyze in detail and make any attempted analysis cumbersome, time consuming, and overwhelming considering there are over 140 maps to analyze. For example, when the provided maps are properly georeferenced state boundaries are 3-miles wide leaving this much distance on boundaries results in way too much room for error during analysis.
- The BLM created web maps for the public to utilize during DRMPA/EIS review in Colorado, Montana, Utah, and Wyoming. The BLM also created a web map for Nevada however, it was not made available to the public. Sharing web maps with the public is a one-click simple change of permission access.
- NDOM created a web application utilizing data provided on the e-planning website it can be found here: https://data-ndom.opendata.arcgis.com/apps/0f475046fbeb4400b0b6b4ea03f3cc37 . Map viewers like this make a complicated review easier for the general public, will foster meaningful comments which may ultimately result in a creative solution to some of the problems facing the GRSG and their habitat, and would comply with the purpose and policy of NEPA as stated in Title 40.

3. **Discrepancies, confusion, and conflicting presentation of information within the numerous tables provided for the Comparison of Alternatives which clearly do not comply with the "clear presentation of the alternatives" as required under the Recommended Format section of Title 40 CFR 1502.10:**

- The tables provided in section 2 comparing the alternatives have many discrepancies and hinder the ability to clearly analyze the implications and potential impacts of the alternatives provided, especially the preferred alternative. The preferred Alternative 5 has some allocations presented in the tables that raise significant concern with respect to minerals.
    i. Table 2-4 Comparison of Alternatives, Habitat Management Area Alignments, Associated Major Land Use Allocations, and Non-Habitat.
        1. Summarized PHMA (and ID IHMA) allocations:
            a. Alternatives 1 & 2 specify the intended HMA boundaries where alternatives 3-4 site maps in the appendix (Map 2.3, 2.4, & 2.5) then directs the reader to Appendix 3 where the reader can then find out that the HMAs in the maps sited will be updated, rendering the maps useless. Again, a slight delay in making this document available for public comment and early notification of data availability would have mitigated this problem.
            b. Locatable Minerals: Alternatives 5 and 6 say "Same as Alternative 4" and alternative 4 only relates to Montana, there is no other information provided.
        2. Summarized GHMA Allocations:
            a. Locatable minerals for alternatives 4-6 say "Same as Alternative 1" which says "SFAs were recommended for withdrawal from location and under the Mining Law of 1872. The BLM applied for a withdrawal pursuant to 204(a) of FLPMA and the Secretary initiated the withdrawal process for those lands."
            b. The action for the SFA's within this RMPA through alternative 1 (recommendation to withdrawal) is completely separate from the "process" quoted in the table within this section.
            c. The SFA's process is currently underway and is a completely separate federal action, therefore the GHMA allocations for alternatives 4 through 6 ARE NOT the same as Alternative 1, because Alternative 1 as put forth here, recommends the SFA's for withdrawal.

4. <u>Absence of data pertaining to mineral production in Nevada within the Affected Environment section and the lack of understanding or inquiry pertaining to statutory mandates requiring the recordation of such data:</u>

- According to Title 40 CFR 1502.15 "The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration" which in this instance has not been "succinctly done" as evidenced by utilizing dated references and data omission, for example:
    - The DRMPA/EIS (3.10.1 page 3-36) references data specific to electricity generation and geothermal power plants in Nevada and sites the "State of Nevada Commission on Mineral Resources 2021". This data is compiled annually by the Nevada Division of Minerals and presented in the annual Major

Mines of Nevada publication, and the 2022 data was available as of November 14, 2023. Note: This comment was previously made.

- The DRMPA/EIS (3.10.4 page 3-40) states "There is no requirement to report the locatable mineral commodities produced or amounts produced each year" which is not true. Also, some production figures are presented in Appendix 3 (page 13-3-15).
    - The Nevada Division of Minerals is required by law (NRS 513.073) to maintain an official register of all mining operations in the state and a record of their annual production. Mine operators are required by regulation (NAC 513.120) to provide to the Division, on or before April 15th, a report relating to the annual status and production of each mine for the preceding calendar year. This information is used to generate statistics on the mining industry, including production, employment, and general economic activity. Note: This comment was previously made.
    - Using the GIS data provided with this DRMPA/EIS and the 2024 USGS Example HMAs, Table 1 summarizes active mines within the HMA boundaries along with the sum of their 2022 annual production. All alternatives include the Thacker Pass mine which is currently under development.

Table 1	Alternatives 1 & 2	Alternative 3-6	USGS Example HMA
Number of Active Mines	12	26	13
Gold Production – ounces (Total/Federal Lands)	1,311,090 / 747,701	2,273,673 / 926,207	2,072,444 / 1,065,338
Silver Production – ounces (Total/Federal Lands)	3,195,427 / 1,322,588	4,549,524 / 1,345,507	415,650 / 98,214
Copper Production – pounds (Total/Federal Lands)	0 /0	139,758,152 / 0	108,416,295 / 0
Molybdenum Production – pounds (Total/Federal Lands)	0 / 0	275,620 / 0	275,620 / 0
Barite Mined or Shipped (tons)	398,569 / 398,569	455,912 / 0	0
Dolomite Production (tons)	50,510 / 50,510	103,346 / 50,510	0
Clay Shipped (tons)	0 / 0	754 / 0	0

    - The DRMPA/EIS (3.10.4 page 3-40) reads "Many locatable mineral prospecting and exploration activities fall under the definition of casual use and thus can occur without notifying the BLM, Required filings of claims, notices of intent or plans of operations do not require the identification of the particular locatable minerals being sought or developed." There should be a period between "BLM. Required".

5. Implications stemming from the designation of Areas of Critical Environmental Concern (ACEC) including unintended consequences:

ACEC Concerns for Nevada's Mineral Industry:

Alternatives 3 and 6 of this DRMPA/EIS have the same 5,776,150 acres of federal lands in Nevada proposed for designation as ACEC. The designation of federal lands as ACECs greatly restricts the ability and opportunity for locatable mineral exploration even at the most basic level. This ACEC designation would result in approximately 37% of federal lands in Nevada being completely withdrawn from mineral entry or subject to financial and time burdensome permitting requirements which could ultimately render some mineral development projects as unfeasible. Decreasing the potential for or causing failure to develop mineral projects will have significant impacts to local communities, counties, states, and ultimately the United States as a whole.

NDOM is not in support of designating over 5 million acres of federal lands in Nevada as ACECs. The BLM's analysis has not presented a clear nor compelling case that ACECs are any more important or require any more prescriptive management outside of the prescriptive management decisions that will be implemented in PHMA areas under any alternative. ACECs would also limit adaptive management approaches focal to the 2019 Nevada Plan as management plans associated with these ACECs would need to be modified in order to implement new management strategies. The designations and restrictions associated with the proposed habitat management areas in all proposed alternatives are sufficient to address the threats to the GRSG and their habitat without an ACEC designation, especially for anthropogenic disturbance that constitutes less than one percent of GRSG habitat loss (DEIS 1.2.2 page 1-3).

Some of the ACECs contain extensive existing authorized uses that make conservation efforts more difficult and result in significant negative impacts on State and local socio-economics. These potential negative effects also do not align with conserving sage-grouse and their habitat in Nevada while maintaining the economic vitality of the state as defined 2019 Nevada Plan. This designation will have negative effects on mineral exploration and development in the State, which will impact several sectors both directly and indirectly related to mineral resource development from down at the local level up to the national level. For a more detailed review on the implications associated with ACEC designation with respect to locatable mineral resources see Appendix A.

6. **The absence of any representation relating to the volume of active mines, mining claims, or fluid minerals leases that may be impacted by proposed Habitat Management Areas (HMA's), special land designations, or recommended withdrawals even if the impact is indirect.**

    - The HMA boundaries that pertain to each alternative and proposed management decisions within, are critical to understanding and "facilitate[ing] public involvement in decisions which affect the quality of the human environment" and for "identify[ing] and assess[ing] the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment" Title 40 CFR 1500.2.

- Data commensurate with the importance of the impact for all alternatives with respect to mineral resources would include, at a minimum: documentation of the distribution and acreages of current mining claims, surface management exploration plans and notices, active mines, geothermal and oil leases within all potential HMA boundaries. Table 2 provides the information listed above with respect to all HMAs boundaries provided on the Eplanning site and the Example HMA as published by the USGS. These data are sourced from the BLM's Mineral and Land Records System excluding active mines which were sourced from NDOM. To learn more about these datasets visit NDOM's data gallery which can be found at https://ndomdata.com and review the metadata associated with each dataset.

Data generated from points within HMA Boundaries provided and referenced on Eplanning	Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alternative 5	Alternative 6	USGS Example HMA
PHMA Mining Claim Listing	42,928	42,928	124,517	61,494	61,162	61,162	58073
PHMA Exploration Notice (Authorized(Pending))	49 (9)	49 (9)	160 (33)	52 (9)	52 (9)	52 (9)	54 (9)
PHMA Exploration Plan (Authorized(Pending))	20 (2)	20 (2)	45 (10)	26 (1)	26 (1)	26 (1)	24 (1)
PHMA Mine Plan (Authorized(Pending))	27 (9)	27 (9)	83 (32)	37 (14)	37 (13)	37 (13)	37 (15)
PHMA Active Mines	7	7	25	11	12	11	5
PHMA Geothermal Leases (Authorized)	31	31	211	37	36	36	37
PHMA Oil (Authorized)	52	52	214	72	72	72	66
GHMA Mining Claim Listing	30,323	30,323	na	42,410	36,184	36,184	18,523
GHMA Exploration Notice (Authorized(Pending))	42 (9)	42 (9)	na	70 (14)	65 (12)	65 (12)	28 (9)
GHMA Exploration Plan (Authorized(Pending))	10 (4)	10 (4)	na	12 (5)	12 (5)	12 (5)	3 (4)
GHMA Mine Plan (Authorized(Pending))	25 (12)	25 (12)	na	32 (14)	27 (13)	27 (13)	11 (4)
GHMA Active Mines	3	3	na	9	8	8	2
GHMA Geothermal Leases (Authorized)	23	23	na	97	55	55	16
GHMA Oil (Authorized)	63	63	na	88	79	79	28
OHMA Mining Claim Listing	21,878	21,878	na	20,613	15,498	15,498	24,981
OHMA Exploration Notice (Authorized(Pending))	43 (8)	43 (8)	na	38 (10)	27 (6)	27 (6)	48 (11)
OHMA Exploration Plan (Authorized(Pending))	10 (1)	10 (1)	na	7 (4)	4 (3)	4 (3)	19 (5)
OHMA Mine Plan (Authorized(Pending))	19 (2)	19 (2)	na	14 (4)	12 (2)	12 (2)	31 (10)
OHMA Active Mines	3	3	na	5	5	4	5
OHMA Geothermal Leases (Authorized)	75	75	na	77	37	37	56
OHMA Oil (Authorized)	70	70	na	54	38	38	69

Conclusion:

NDOM appreciates the opportunity to provide public scoping comments in response to the BLM's DRMPA/EIS. The importance of this DRMPA/EIS is clear and needed, but NDOM is concerned with the alternatives not meeting the 2019 Nevada Plan and their significant impacts to anthropogenic activities, which only makes up less than one percent of GRSG habitat loss instead of addressing the main impacts to GRSG.

Decisions affecting such large areas of land must be properly and methodically analyzed in detail to ensure states, counties, and local communities and their associated economies are not negatively impacted. Ambiguous and unclear alternatives, data, and maps inhibit detailed analysis of potential impacts, as well as the inconsistencies and changing data demonstrates that this DRMPA/EIS was posted for an artificial deadline rather than waiting for the best science available. The DRMPA/EIS lacks "clear presentation of the alternatives" as required under the

Recommended Format section of Title 40 CFR 1502.10, and ignored publicly available data pertaining to mineral production in Nevada within the Affected Environment section to minimize the direct impacts to the minerals industry. Additional information on NDOM's analysis on ACECs and their impacts to the minerals industry can be found in Appendix A.

Mining is vital to rural economies of Nevada and required for the energy transition off fossil fuels and renewable energy projects. Both at the State and Federal levels, numerous efforts are underway to fulfill existing orders to guarantee U.S. economic prosperity; national security; a sustainable climate future; along with diverse, resilient, and secure critical mineral supply chains. The development of sufficient in-state electric generation resources solar, wind, and geothermal are key to the energy transition yet, geothermal is treated the same as oil and gas instead of solar and wind despite the Biden administration's recognizing geothermal as a renewable energy.

As stated before, NDOM does not support any type of withdrawal or exclusion to the public lands in Nevada and does not support alternatives 3, 4, and 6. NDOM recommend that the BLM performs a supplemental EIS while only focusing on alternatives 1, 2, and 5 using the most recent USGS published data to ensure that the best available science is being used and align with the 2019 Nevada Plan.

Sincerely,

Rob Ghiglieri
Administrator
Nevada Division of Minerals
rghiglieri@minerals.nv.gov

Additional comments regarding minor issues observed within the DRMPA/EIS are found in Appendix B.

BACKCOUNTRY HUNTERS & ANGLERS
OREGON

Department of Interior,
Bureau of Land Management

June 13, 2024

RE: Sage Grouse Plan, Public Comments

NEPA Number: DOI-BLM-WO-2300-2022-0001-RMP-EIS
Project Number:

To Whom it May concern,

The Oregon Chapter of the Backcountry Hunters and Anglers, wish to provide comment on the upcoming Sage Grouse Plan.

Please find our comments here:

- We support the protection and restoration of greater sage grouse and the hundreds of other species that depend on intact sagebrush ecosystems, including pygmy rabbits, pronghorn, mule deer, and golden eagles.
- We support Alternative 3, the strongest conservation alternative that protects the most important habitats from any further disturbance.
- We support the Bureau in 'locking-in' management timeframes for evaluating the impacts of grazing in greater sage grouse habitats; without enforceable schedules, this important impact is being ignored.
- We oppose the use of 'restoration' as mitigation – too often, this means removal of native, woody vegetation and 'treatments' that harm sage grouse habitats over the long term.
- We oppose the broad application of waivers, exceptions, and modifications that allow destructive projects to occur in habitat that is supposed to be protected.
- We oppose the adoption of half-measures and discretionary protections: the time to protect sage grouse is long since past and the Bureau needs to take decisive action, regardless of the political pressures.

WWW.BACKCOUNTRYHUNTERS.ORG/OREGON_BHA
OREGON@BACKCOUNTRYHUNTERS.ORG

History:

For over 100 years the scientific community has documented the decline of sage-grouse across its range – a cyclical pattern of population peaks and troughs that has steadily fallen over time peer reviewed studies also show declines from the 1930's, to present day[1,2,3].

While some amount of fluctuation is normal, drought periods exasperating, the alarming trends observed recently threaten a population crash. Since 1965, there has been an 80% decline, and half of that decline has happened just since 2002[4].

The USFS and BLM together manage nearly 450 million acres of (grazing) land, or nearly 20% of the entire U.S[12].

ESA listing has been avoided a number of times, even though the trendline has been observed descending for four decades.

Greater Sage Grouse Plan, Comments:

The "sagebrush sea", or the widely known sagebrush biome, was once one of the most widespread ecosystems in the United States but today much of what once existed has been converted, fragmented and degraded[8]. Grazing, development, changing fire regimes, invasive plant species, and other factors have left our sagebrush ecosystems in dire condition and the Greater Sage-Grouse at risk of extinction[5].

Progress since 2015 has been limited. In 2015 the situation got worse when the USFWS denied protection altogether, taking it off the "candidate list." And in 2017 the Trump administration announced plans for a "review" threatening to undermine efforts to protect greater sage grouse across 11 western states, giving big oil companies and other polluters potential new access to vital grouse habitat.

And, in 2019 the Trump Administration rolled back some protections on federal lands that were part of the plans that allowed the government to avoid listing Sage-Grouse once again. So, as we help keep up the fight for federal protection, we're also defending greater sage grouse from Big Oil and other individual threats.

Oregon-specific comments:

Following years of steep declines, the bird is dwelling at the second-lowest population level ever measured in our state[3]. The federal government, particularly, the BLM, is entrusted with the majority of the bird's remaining habitat, the importance of managing these public lands for conservation, connectivity and climate resiliency cannot be understated.

As noted above, some elements of the Oregon Plan have not been implemented. The State of Oregon has failed in the 2017-18 biennium to allocate adequate funding to implement key items of the Plan.

The Oregon Chapter of Backcountry Hunters and Anglers offers these recommendations:

1. **Identify and conserve late summer habitat where greater sage-grouse raise their young.**

Imagine you're a sage-grouse hen with chicks looking for habitat on a hot August day. You'd want to hang out in a cool, green, lush meadow, right? Indeed, that's their preference, as confirmed by research from the northern Great Basin.

Unfortunately, the cool, green, moist environments that sage-grouse hens and chicks need in late summer are also some of the most limited and threatened habitats in the sagebrush steppe.

Most mesic areas (riparian areas) reside on private ground. This is also the most important 1% of the landscape that is essential to the survival of the species; and humans also tend to inhabit this for the life-saving water that exists in the semi-arid and arid areas of the west.

***Our recommendation*:** Identify and specially protect these habitats as key to sage-grouse survival over the hot summer months.

Also, another way to help, is reintroducing beaver to habitats is a great way to restore streams, creeks, and wet meadow habitat. Beaver do a wonderful job, and they work for free.

2. **Identify and conserve winter habitat where greater sage-grouse feed and take shelter.**

Unlike summer habitat, there is ample winter habitat for sage-grouse in Oregon, but current plans fail to protect those areas.

Our recommendation: Identify and bar any disturbance to these stands of tall sagebrush shrubs that sage-grouse depend on for food and shelter during snowy winters.

***Our recommendation*:** Manage the frequency and intensity of grazing to sustain native grasses, wildflowers, and shrubs. Stubble-height is critical to sage grouse survival. Ensuring that this critical habitat feature is left intact, will ensure higher survival rates for chicks.

3. **Mitigate climate change impacts on greater sage-grouse and sagebrush habitats.**

The Biden administration has made climate change adaptation a centerpiece of its conservation agenda, and now the Bureau of Land Management is considering how best to manage sage-grouse and other flora and fauna in a warming world.

***Our recommendation*:** Protect higher elevation, cooler environments and connective corridors between them to aid species seeking refuge from climate effects, while ensuring that permitted land use and development don't compromise the ecosystem's ability to withstand warmer temperatures and more frequent drought.

Lower elevation areas of our state are the most vulnerable in the entire country to climate change effects. Lake, and Harney counties are shown to be some of the fastest temperature increases in our state, and in the nation.

4. **Manage domestic livestock grazing to support greater sage-grouse conservation and ecosystem resilience[6].**

Livestock grazing is the most pervasive use of sage-grouse range in Oregon, with upwards of 12 million acres (84%) of public lands permitted for grazing.

While the debate continues over the exact effects of grazing on grouse habitat, there are some common-sense steps the Bureau of Land Management can take to both better understand potential impacts and ensure grazing does not unnecessarily harm the species.

Establish monitoring programs that report findings annually. Reporting these findings is essential to find variability in year-to-year datasets that track weather, predation, habitat influences, etc.

Grazing systems that enhance habitat: Sage-grouse need to use large tracts of land during the year for survival and habitat fragmentation was one of the primary concerns of the USFWS when they listed sage-grouse as a candidate species. Practices that improve rangelands for livestock can also improve the habitat for sage-grouse. NRCS helps land managers develop grazing plans that will improve sage-grouse habitat and livestock production. NRCS can also provide information on easements or conservation agreements. These practices offer ranchers some protection from further regulations.

Monitoring is critical to success. Establish strict timelines for grazing start and finish dates[13].

***Our recommendation*:** Ensure grazing sustains robust, resilient, sagebrush habitats, while setting aside ungrazed areas for comparative research; remove or modify unnecessary fences and livestock water developments, and manage livestock to avoid contributing the spread of exotic weeds; and allow grazing permittees to voluntarily retire their grazing permits as part of a comprehensive land management program.

5. Preserve greater sage-grouse priority habitat from new disturbance.

Sage-grouse are quite sensitive to human disturbance in their habitat, including development of energy facilities, transmission lines, cell phone towers, mining operations, roads and other infrastructure, as well as large-scale vegetation management projects.

***Our recommendation*:** Limit and even restrict ANY developments shown to disrupt and disturb critical timing (nesting/rearing) habitats, in the most essential sage-grouse habitat areas.

6. Plan and manage travel in greater sage-grouse habitat.

This one is simple, and something the Bureau of Land Management has previously identified as important to conserving the bird's habitat.

***Our recommendation*:** Conduct new transportation planning in eastern Oregon, and with an eye toward conserving sage-grouse and other wildlife. These public processes determine which routes should remain open, what routes should be closed, and areas that should be preserved from off-road vehicle use to protect sensitive natural resources.

Travel Management Plans are essential to guiding recreationists away from areas essential to brood-rearing. Examples abound. On the Deschutes National Forest lands, in central Oregon, elk calving areas and sage grouse rearing areas, are closed to recreational users for the duration of those critical activities.

7. Retain, designate and manage sagebrush reserves for greater sage-grouse and other fish and wildlife.

The science is clear. Designating and protecting habitat reserves is more likely to conserve and recover sensitive and imperiled species than not. Thankfully, the BLM's current sage-grouse plan for Oregon designates important and expansive habitat areas for sage-grouse, but they could be larger, and better protected.

Our recommendation: Designate and protect habitat reserves, climate refugia and movement corridors to support sage-grouse and other wildlife as they contend with land use, fire, invasive species and climate change. ACEC's are key to designations critical to the survival of many sagebrush biome species.

8. **Establish invasive grass-baselines, through satellite/GIS data, monitoring three key invasive grasses.**

The data are clear, invasives are growing exponentially and are a contributing factor in displacement of sage grouse, and increasing the fire-frequency in the sagebrush steppe[7].

Our recommendation: Increase funding for programs by county, BLM District, or Weed Control Association, to address the invasive grass problem. Cheatgrass, Ventanata, and Medusahead, are the three most prolific and damaging to the ecosystem.

9. **Establish early detection monitoring for wildfires in high wildfire-prone areas.**

Newly established Infrared (IR) monitoring cameras throughout portions of the west are showing their value with success in early detection of rangeland fires.

Our recommendation: Look at the successful IR cameras being deployed and correlate with locations optimal for early detection, and utilize more of these innovative assets across the most critical sage grouse habitats.

10. **Continue herbicide applications to limit the spread of high-density annual grasses, where the science shows effective successes.**

The data are clear, and the numbers speak for themselves. We need to permanently protect sagebrush strongholds and climate reserves; map and plan for habitat and genetic connectivity corridors; restore and preserve riparian and key upland habitats; fund early detection and wildfire suppression capabilities in sagebrush systems; and develop comprehensive science-based wildfire management policies.

11. **Mark Fences.**

While in flight, sage-grouse can't see wire fences—their eyes, situated on opposite sides of their head, are ideal for spotting predators, but not great for looking straight ahead. So, the birds have a tendency to crash into the fences when they're in the vicinity—which is a problem, because sagebrush breeding grounds (also known as leks) often overlap with fenced-off ranches. By attaching vinyl flags to fences, ranchers have already prevented between 1,500 to 1,800 sage-grouse fence strikes across the West.

Some estimates suggest there are a thousand miles of fence near Leks that require year-round effective top-wire markers.

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8. Oregon Natural Desert Association, Jeremy Austin, October 13, 2020, In the News
9. Oregon Department Fish and Wildlife: https://www.dfw.state.or.us/wildlife/sagegrouse/population.asp
10. https://rangelandsgateway.org/topics/uses-range-pastureland/what-has-been-done-help-sage-grouse-what-else-can-be-done
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Lahontan Audubon Society
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May 14, 2024

BLM State Office
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440 W. 200 S. #500
Salt Lake City, UT 84101

Via mail and email: BLM_HQ_GRSG_Planning

Re: comments on Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement (Draft RMPA/EIS)

On behalf of the Lahontan Audubon Society (LAS), I am pleased to submit comments regarding the consideration by the Bureau of Land Management (BLM) of potential Areas of Environmental Concern (ACEC) in the Draft RMPA/EIS. The Lahontan Audubon Society is a non-profit organization serving all of northwestern Nevada and represents a membership of conservation-minded individuals and families. Our mission is to preserve and improve the remaining habitat of birds and other wildlife, restore historic habitat, and educate the public, with emphasis on children, providing vision to all about our unique Nevada environments. We have been participating in Greater Sage-Grouse (GRSG) conservation efforts since 2000, including the development of Nevada's first GRSG Conservation Plan, planting sagebrush as part of GRSG habitat restoration projects, and commenting on subsequent GRSG management plans, including in 2015 and 2017. We remain very concerned about the continuing declines in GRSG population as well as continuing declines in GRSG habitat. It is evident that additional protection, conservation and management is needed by the BLM to stop and/or reverse these declines on public lands.

In regard to potential ACECs being considered by the BLM, we found much information on some specific proposed ACECs (12 Nevada, and 4 in adjacent states), regulatory requirements, the process by which BLM evaluated ACEC nominations for meeting relevance and importance criteria, and BLM recommendations for their inclusion in the draft EIS.

Unfortunately, we did not find clear directions in the Federal Register Notice for this EIS on what information BLM is requesting regarding potential ACECs described in the document. We do appreciate a contact and response from a BLM official about the

agency request re: ACEC comments and that the ACEC comment deadline is June 13, 2024. However, we believe that BLM should clarify publicly what kinds of information about potential ACECs which it is asking the public to submit.

In the meantime, we do have some comments on BLM's consideration of ACECs in Nevada and E. California, Maps of the potential ACECs should be provided with ACECs labelled. Information on why these ACECs were selected for consideration and other nominated ACECs were not selected would be very useful. The detailed process BLM used in assessing the nominated areas did determine that ACEC requirements for relevance and importance and also needs for special management were met.

The EIS is very complicated about the relationships among GRSG areas on public lands including PHMAs, GHMAs, IHMAs, SFAs (sagebrush focal areas) and GRSG ACECs. We do not yet understand whether ACEC designations would provide for needed greater BLM protections, conservation, restoration, and management of GRSG populations and habitat than the PHMA requirements or the SFA requirements, but we would support any or all designations which are more beneficial to GRSG. We would also be very interested in helping to develop and implement future management plans for GRSG ACECs designated by BLM in Nevada, especially habitat restoration.

Thank you for considering our comments on potential GRSG ACECs in the Draft RMPA/EIS.

Sincerely,

Rose Strickland, Chair
Conservation Committee
Lahontan Audubon Society

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WYOMING MINING ASSOCIATION

1401 Airport Parkway, Ste. 230 - Cheyenne, WY 82001 - (307)-635-0331

June 11, 2024

The Honorable Tracy Stone-Manning
Director
Bureau of Land Management
US Department of the Interior
1849 C Street NW
Washington, DC 20240

Submitted electronically at: BLM_HQ_GRSG_Planning@blm.gov

RE: Greater Sage-grouse Land Use Plan (DOI-BLM-WO-2300-2022-0001-RMP-EIS)

Dear Director Stone-Manning:

The Wyoming Mining Association (WMA) is a statewide trade organization that represents and advocates for 33 mining company members producing bentonite, coal, trona (natural soda ash), uranium, and lignite, as well as companies developing gold, lithium, copper, and rare earth element deposits. WMA also represents over 100 associate member (service and supply) companies, one electricity co-op, and one advanced nuclear power company.

Introduction

The Wyoming Mining Association (WMA) appreciates the opportunity to comment on DOI-BLM-WO-2300-2022-0001-RMP-EIS 2021 Greater Sage-grouse Land Use Plan. The U.S. Bureau of Land Management (BLM) released the plan for public comment on March 15, 2024. The WMA recognizes the need for protecting greater sage grouse (hereafter sage grouse) and their habitat. The WMA recognizes that the biology of the sage-grouse requires habitat characteristics that must be protected in order to maintain sage grouse populations at levels that will not warrant listing under the Endangered Species Act (ESA) now or in the future. These habitat characteristics include large contiguous areas of sagebrush. Sage-grouse exclusively inhabit the sagebrush communities. These communities need to provide enough grass understory for nesting and flowering forbs for attracting pollinating insects which are an important protein source for growing sage grouse chicks. Sagebrush communities also need to provide sagebrush of sufficient height and density to serve as winter cover and food.

General Comments

The WMA supports Alternative 2 in Wyoming[1], the no-action alternative. Although Alternative 5 (preferred alternative) closely follows the State of Wyoming sage grouse core area strategy WMA believes that Alternative 2 would best implement the option to continue current management practices which have been in effect since the first Wyoming Governor's executive order in 2008 and through other monitoring and protective measures well before that. Wyoming sage-grouse and sage grouse habitat protection has been implemented through the core area strategy. Wyoming's state program is summarized in Appendix 14

Section 14.1.10 page 14-10. Wyoming has been engaged in greater sage-grouse protection measures under a succession of Governor's Executive Orders (EO) beginning with EO 2008-2 in 2008 and continuing through the current EO 19-3 signed in 2019. The Wyoming mining industry has had annual sage-grouse lek monitoring and reporting programs in place since the early 1980s or earlier. These monitoring programs were and continue to be conducted in cooperation with the Wyoming Department of Environmental Quality – Land Quality Division (WDEQ) and the Wyoming Game and Fish Department (WGFD). The Governor of Wyoming established the State Sage-Grouse Implementation Team which is comprised of state and federal agencies, representatives of local governments, members of Local Working Groups, and private citizens to make recommendations to maintain and enhance sage grouse populations and habitats.

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[1] [1] Page 2-15 (Table 2-4) notes non-energy leasable minerals are closed to leasing under all alternatives in all States, with exceptions in PHMA allocations. The exception in Wyoming under Alternative 1 (which are also referenced by Alts 2, 4, 5, and 6) indicates land use for non-energy leasable mineral is open in PHMA allocations but subject to occupancy, seasonal limitations, disturbance, and density. Alternative 3 is not acceptable because it indicates that land use for non-leasable minerals is closed completely in PHMA allocations.

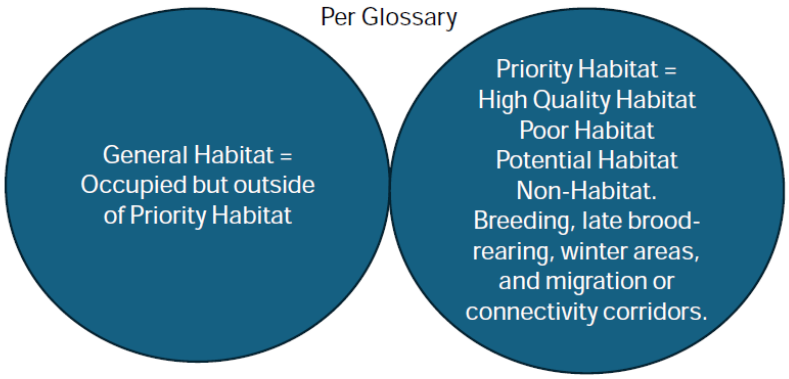
Wyoming's commitment to sage-grouse conservation is reflected in its holistic approach as well as the collaboration between the government and broader community. Formal protections can be found in the requirement that state agencies include sage-grouse and sage-grouse habitat protection plans in their permitting, construction, and operating plan requirements. Wyoming's protection program includes local sage-grouse working groups throughout the state that are made up of stakeholders in industry, agriculture, and conservation groups. This local engagement provides significant local insight into the status of local sage grouse populations and provides on-the-ground habitat improvement projects. The State of Wyoming has provided funding for research, monitoring, and on the ground habitat improvement projects. Much of this funding is channeled through the Wyoming Wildlife and Natural Resource Trust and the local sage grouse working groups. Wyoming is a recognized leader in sage-grouse protection measures. It is the opinion of the WMA that the current management protection and enhancement programs in place provide adequate protection for sage grouse and the selection of Alternative 5 (the preferred alternative) would put unnecessary burdens on Wyoming's energy sector.

The abstract notes this Resource Management Plan (RMP)/DEIS has implications on the 76 RMP's. Any RMP/DEIS that is currently in the review phase (for example the Rock Springs RMP) should be put on hold until this document is finalized. Once this planning document is finalized, only then can the other 76 RMP's be properly evaluated for sage-grouse planning actions. There is no way to adequately evaluate the cumulative impacts of the individual RMP's without knowing what planning actions are required under the sage-grouse RMP. As an example, the sage-grouse RMP proposes Areas of Critical Environmental Concern (ACEC)'s. ACEC's should be part of an umbrella planning document such as a statewide or field office RMP, and should not be part of the sage-grouse EIS.

Page 1-3 of the DEIS includes population trends described through 2021. The 2022 dataset was published prior to publication of the RMP/DEIS, the document should explain why the 2022 dataset was not included in the population trend dataset. At a minimum, there should be

an explanation that the 2022 dataset was promising showing many areas with increased numbers. Likewise, 2023 also showed many improvements in trends but that dataset was not yet available.

The definition of General Habitat and Priority Habitat Management Area (PHMA) is confusing at best and doesn't appear to follow sound science but is rather based on the 'buckets' that BLM is trying to manage. The BLM is encouraged to streamline the definition based on sound science. Sound science indicates that priority habitat is within general habitat, but BLM's definition makes the areas mutually exclusive which compounds the management actions that aren't warranted. Below is an illustration regarding BLM's definition of general and priority habitat.


Per Glossary
General Habitat = Occupied but outside of Priority Habitat
Priority Habitat = High Quality Habitat Poor Habitat Potential Habitat Non-Habitat. Breeding, late brood-rearing, winter areas, and migration or connectivity corridors.

The DRMP/EIS Includes Compensatory Mitigation Which is Not Authorized by FLPMA

Another problematic issue with the DRMPA/EIS is its heavy use of compensatory mitigation. The document's Planning Criteria makes it clear that BLM's authority to do so lays in the Federal Land Policy and Management Act (FLPMA).[1] The Bureau later discusses how the DRMPA/EIS will implement a mitigation hierarchy for any impacts from human activity on GRSG or their habitat, including the use of compensatory mitigation.[2] Specifically, Section 2.5.3 describes how BLM will include compensatory mitigation in its mitigation hierarchy when authorizing uses of public lands. The DRMPA/EIS also states that compensatory mitigation should be "…completed prior to associated actions occurring.[3]" However, this is inherently contradictory since compensatory mitigation is not authorized by FLPMA.

The word "compensatory" does not appear in the FLPMA statute at all, and the word "mitigation" only appears three times, two of which refer to mitigating the financial impact of federal lands being nontaxable by states, and the other is a reference to mitigation of impacts in the Forest Research Natural Area in Alaska.[4] The Bureau's desire to mandate compensatory mitigation as part of GRSG management as envisioned in the DRMPA/EIS has no statutory basis in FLPMA.

[1] 43 U.S.C. Sec. 1701-1787
[2] Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement, Pages 2-22 through 2-24
[3] Ibid
[4] 43 U.S.C. Sec. 1785

As BLM confirmed in issuing Instruction Memorandum (IM) 2019-018, "FLPMA does not explicitly mandate or authorize the BLM to require public land users to implement compensatory mitigation as a condition of obtaining authorization for the use of the public lands."[5] In the IM, BLM goes on to note that compensatory mitigation can be allowed or even required if mandated by state law or other federal statutes, or if a project applicant voluntarily offers to provide it. However, those are all legally and factually different from the DRMPA/EIS' requirement for project applicants to provide compensatory mitigation based on the Bureau's FLPMA authority. If BLM believes that it should have the authority to require compensatory mitigation for projects or uses of public lands, the Bureau should petition Congress to enact legislation granting it such authority. However, since Congress has not yet done so, BLM cannot require the kind of compensatory mitigation that the DRMPA/EIS calls for.

Wyoming is home to a unique scope of essential minerals. The BLM's Draft Environmental Impact Statement (DEIS) impacts several sectors of the Wyoming mining industry.

General Minerals

Mineral development has the capacity to impact sage-grouse habitat as much of the mineral development is on sagebrush grassland habitats or adjacent grassland, saltbush, and greasewood communities. The Wyoming mining industry as well as state and federal agencies that regulate mining and reclamation have been well aware of these impacts for many decades. Mine reclamation programs include soil handling practices, cultural practices, and native seed mixes with native grasses, forbs, and shrubs designed to reconstruct sage-grouse habitat. Reclamation of sagebrush communities provides habitat not only for sage grouse but many species and classes of wildlife. As these reclaimed communities mature many have passed phase 3 bond release under the standards of the Wyoming Environmental Quality Act (EQA), and in the case of coal, also under the requirements of the Surface Mine and Reclamation Act (SMCRA). The industry recognizes the importance of protecting and reclaiming sage-grouse habitat to maintain and allow the growth of sage-grouse populations. This DEIS through six alternatives appropriately emphasizes protective measures for habitat, but largely overlooks the role mined land reclamation plays in maintaining the quantity of sage-grouse habitat. The mining and reclamation laws cited above as well as the mine permits themselves require timely reclamation that meets the habitat requirements of the native wildlife, including sage-grouse. The phase 3 bond releases testify to the functionality of these reclamation programs. Phase 3 bond release means that authorized person in state and federal regulatory authorities have certified that the reclamation has met the requirements of applicable laws. Subsequently that land is released from liability and bonding requirement. The reclamation and bond release are the final steps in which a mineral extraction area, whether open pit or underground, is an interim land use and the land is returned to its approved post-mine land use as required by law and mine permit. While maintenance shops, processing plants, and other surface facilities will be long duration impacts on the land, the open pit or surface facilities that follow underground mineral extraction are an interim land use. These conditions speak in favor of site-specific evaluation of projects and use of best management practices rather than closures or withdrawals.

[5] Instruction Memorandum 2019-018 *Compensatory Mitigation*

Leasable Nonenergy Minerals

Page 4-96 Section 4.10.2 Non-Energy Solid Leasable Minerals – This section opens with the statement "Closing an area to non-energy solid mineral leasing would directly impact non-energy solid leasable minerals to the extent that such minerals are known to exist by removing the possibility any such mineral resources in that area from being accessed and extracted." This is a true statement but one that requires re-evaluation in some cases. Primarily the Known Sodium Leasing Area (KSLA) west of Green River, Wyoming in the Rock Springs and Kemmerer Field Offices is a unique trona deposit with active trona mining. Trona is mined by conventional underground mining methods and solution mining. Both methods require some surface infrastructure. The trona is refined into natural soda ash which is sold to consumer and industrial markets worldwide. The industrial markets include lithium carbonate manufacturing for renewable energy storage batteries and photovoltaic glass for solar panels for solar energy. This market supports the goal of the U.S. government to develop utility scale renewable energy and can only be supplied domestically by the trona and soda ash industry in the KSLA. No other domestic deposit exists of this commercial scale. The only alternative sources of soda ash are from overseas, including most recent increased production from China. Additionally, most imported soda ash is synthetic, as opposed to Green River's natural soda ash and has a higher greenhouse gas footprint and energy consumption. To rely on overseas sources of soda ash to support lithium carbonate manufacturing works cross-purpose with renewable energy goals.

It is crucial for soda ash manufacturers to collaborate with the Bureau of Land Management (BLM) field offices and the WGFD to develop protection measures that are tailored to each case. This collaborative approach allows for the sustainable management of sage-grouse populations while permitting mining activities to continue in a way that is sensitive to the ecological needs of the area. By working within the framework of the State of Wyoming Governor's Executive Order 19-3, soda ash manufacturers in the KSLA can help ensure that their operations are conducted in a manner that supports the conservation goals for sage-grouse and its habitat. This collaborative effort is essential for balancing economic development with environmental stewardship.

This section further states "Management actions creating right of way (ROW) exclusion or avoidance areas would indirectly impact nonenergy solid leasable mineral extraction by limiting the available means for accessing mineral resources and transporting nonenergy solid leasable minerals to processing facilities and markets." This is not only an indirect impact but a direct impact as well. In the case of solution mining of trona, injection wells, extraction wells, water pipelines, electric power, and access roads are necessary to operate the mines. We recognize that these facilities can impact sage-grouse habitat. However, construction details and timing are worked out with the Wyoming Department of Environmental Quality – Land Quality Division (WDEQ), which is the mine permitting agency, the applicable BLM field office, and WGFD which administers the Wyoming Governor's Executive Order on sage-grouse. These details include WGFD conditions that state: no construction work during the sage grouse breeding season March 1 through May 15 between 6:00 PM and 8:00 AM. The conditions as well as construction details serve to minimize the impact sage-grouse breeding. The Wyoming core area strategy places a 5% limitation on how much land can be disturbed in sage grouse core area by the Disturbance Density Calculation Tool (DDCT). Limitations already in place in Wyoming serve to protect sage-grouse habitat and populations and serve

the BLM multiple use purpose and long-term essential mineral needs better than exclusion areas or avoidance areas in the KSLA.

This section also states “Nonenergy solid leasable mineral operations may be moved to private lands, thereby resulting in a loss of federal royalty income if the federal minerals could not be accessed from the private lands.” Accessing federal mineral from private lands is likely possible in some cases but this must not be assumed for all cases. Nor should moving mineral extraction operations to private lands and bypassing federal mineral be assumed to be a feasible or economical alternative. The KSLA is in a land ownership area known as the checkerboard. The checkerboard was created by the Union Pacific Railroad land grant. Even numbered sections are federal and odd-numbered sections are private. Two of the even-numbered sections in each township and range in the checkerboard are BLM surface and State of Wyoming mineral, that is, split estate. Accesses to private surface and mineral in odd-numbered sections require ROWs over BLM surface. Likewise, access to State mineral usually requires ROWs on BLM surface. Therefore, it would be practically impossible to develop resources in the KSLA using access soley through private lands. Property rights of private and State surface and mineral owners must be recognized, respected, and preserved.

Page 4-97 Section 4.10.2 Non-Energy Solid Leasable Minerals – Alternative 1 Rangewide Environmental Consequences – WMA supports that this alternative makes an effort to keep the KSLA open to exploration as well as proposing considering leasing on a case-by-case basis for land outside the KSLA. Surface infrastructure, such as water pipelines, to support trona mining in and outside of the KSLA must be allowed. Trona operations in the Wyoming KSLA should continue to operate under the seasonal restrictions developed by WGFD and the DDCT without additional restrictions given the unique and irreplaceable nature of the trona deposit. This language is repeated on Page 4-101.

Page 4-101 Section 4.10.2 Non-Energy Solid Leasable Minerals – Alternative 3 – Under Alternative 3 there are no General Habitat Management Areas (GHMA) and all areas managed for sage-grouse are designated Priority Habitat Management Areas (PHMA). All PHMA are closed to new non-energy mineral leasing. The WMA believes that this is both unacceptable and unnecessary for protection of sage-grouse populations and their habitat. This alternative eliminates any flexibility in the adoption of biologically sound solutions to manage the impacts in and around sage-grouse habitat. Furthermore, it also eliminates leasing of essential minerals, even if mined underground. Due to the unique nature of wyoming’s trona resource in the KSLA, it cannot be replaced with mining in another area. We must also reiterate here that as it relates to coal and trona in the checkerboard, decisions on land use and protective measures must be made with property rights of adjacent private and state landowners in mind.

Pages 4-129-130 Section 4.12.1 Social and Economic Effects Nonenergy Leasable Minerals Management – This section acknowledges the productivity of these mineral industries, due to restrictions and stipulations, will have many direct market impacts including direct and secondary jobs, income, economic output, tax revenues, public services and infrastructure. It is specifically pointed out that 90% of domestic trona is produced in this region. This region refers to the KSLA just west of Green River Wyoming.

Trona is refined into natural soda ash. Many important products come from refining trona. Soda ash is used in many consumer and industrial products. These products include baking soda, soaps and detergents, window glass, and photovoltaic glass for solar panels. Soda ash is also an essential raw material for manufacturing lithium carbonate for storage batteries used for utility scale renewable energy. Sodium hydroxide is a product of trona processing. Large quantities of sodium hydroxide are used in pollution control equipment such as scrubbers on power plants. Should soda ash not be produced in the KSLA, the growing demand will be met by imports, much of it originating from our global competitors in China. To purchase soda ash from overseas sources will shift the economic benefits from the U.S. to foreign countries and impede current efforts to cultivate a more robust domestic mineral supply chain. This section also states that "Restrictions on mineral leasing on BLM-administered lands could increase costs associated with mineral extraction by requiring operators to find other lands that are outside of GRSG HMAs, if other nearby lands are available and hold the desired subsurface minerals; however, there are often not nearby alternative lands, since nonenergy leasable minerals are not abundantly available." This would be very true in the KSLA. The KSLA is the minable trona deposit. To impose restrictions that preclude mining will only reduce the quantity of trona in the national reserve. There is no other land in the United States on which trona can be mined in large quantities. As is also pointed out in this section, increased production costs will raise consumer prices on household goods that have inelastic demand. From the perspective of environmental justice, this will negatively impact the portions of the population with lower incomes. More directly, restrictions on trona mining and soda ash production in the KSLA will negatively impact local economies around the trona mining area in southwest Wyoming. Sweetwater County in southwestern Wyoming is specifically mentioned in the EIS as economically impacted by restriction on the mineral industry. DEIS text states that changes in nonenergy leasable mineral extractions are likely to occur over the long term and that this could result in some mining operations closing if they are unable to expand or move future operations to other locations. Trona mining cannot be moved to another location. Trona must be mined in the KSLA because that is where the deposit is geologically bound. These mines must be able to expand as trona is mined. This will require new federal, private, and state leases. That two new trona mining operations are in the development stages should demonstrate the growing importance of this unique Wyoming resource. All indications reinforce that the market for natural soda ash is strong and growing. As utility scale solar and wind energy development grow along with the need for utility scale battery storage this demand for natural soda ash will continue to grow. National goals for renewable energy development are only as achievable as the supply of raw materials, including natural soda ash, for the needed infrastructure. The existing trona mining and refining operations have large infrastructure in place and are prepared to grow in an environmentally responsible manner to meet these growing demands. These companies are all committed to protecting sage grouse and sage-grouse habitat. Their environmental stewardship is well demonstrated and documented. Just one example of this documentation is the Annual Report to the Wyoming Department of Environmental Quality – Land Quality Division. Trona companies follow the State of Wyoming core area strategy under Governor's Executive Order 19-3 and are actively engaged in technology transfer regarding sage-grouse science and protective measures. Their commitment to conservation is clearly demonstrated by their partnership and leadership in the Wyoming Mining Natural Resource Foundation.

If access to this essential mineral is restricted, there would be significant hardship for employees whose jobs would be eliminated. However, this direct impact would feed into a much broader and devasting future for Sweetwater County and the region. The trona industry is a source of business for a more expansive network of suppliers and contractors. These businesses represent significant secondary employment. In addition, trona industry employees are customers of many retail businesses in southwest Wyoming and serve as volunteers in the community. The employees of the trona industry and related industries are part of a community which will suffer if the industrial base is reduced. Additionally, trained miners leaving the area to find employment will, as the DEIS states, have a longer lasting impact. Trained miners are not easily replaced. It takes several years and investment in training to develop a safe and skilled mining and processing plant workforce. Keeping experienced miners on the job is a serious economic need when the industry has strong and growing demand for its products.

Page 4-142 Section 4.12.2 Alternative 1 Nonenergy Leasable Minerals Management – This section states that most PHMA would be closed to new leasing but states can consider expansion of existing leases. Later it is stated "There could be economic and social impacts, as detailed in Section 4.2.1, Nature and Type of Effects, due to current BLM-management decisions regarding access to nonenergy leasable mineral extractions in certain locations, such as Wyoming, where nonenergy leasable minerals are important to the local economies; however, it is not anticipated that these impacts would be large due to adaptive management and allowing the Known Sodium Leasing area to remain open to exploration and consideration for leasing development." The wording of this section suggests that that an exception to closure to new leasing would be made in the KSLA. However, the wording leaves uncertainty. Stronger assurance is needed that the KSLA will remain open to new leasing and that protective measures will follow the Wyoming core area strategy. While trona is mined underground it requires some surface infrastructure. The trona industry needs a stronger assurance that trona mining can continue in the KSLA and that leasing will be available. This is of utmost importance to all trona operators and particularly to new operations that have not fully developed their operation. Trona production benefits the southwest Wyoming communities but the benefits extend far beyond the local communities. Operators need the ability to develop site-specific measures to protect sage-grouse and their habitat while expanding their operations to meet demand for their products while supporting the U.S. economy and renewable energy goals.

Coal

Page 4-103 Section 4.10.3 Coal Nature and Type of Effects – It is important to remember that the objective is to protect sage-grouse populations and habitat within the multiple use framework of BLM lands. We recognize the challenge this presents. This section points out that closing an area to new coal leasing would directly impact coal production and removes coal deposits in that area from being accessed and mined. Coal is a valuable resource in this country's electric power generation mix. Even though renewable energy is a growing percentage of the energy mix, coal is still an essential part of that mix. Future advances in coal technology must also be considered. It must be recognized that modern coal mining methods and the economics of these mining methods are not conducive to simply restricting production to private or state land. This might work for small-scale operations or for very shallow coal seams but it does not work for the operations in Wyoming, most of which are large scale and because of large scale, produce coal economically and at a cost that benefits

electric power consumers. As an important case in point, much of the coal mining in southwest Wyoming is on the checkerboard. The checkerboard land arrangement was described earlier in this document. The large-scale mining operations on the checkerboard are not feasible by limiting future mining to private sections only. These operations use large walking draglines for surface mining and longwalls for underground mining. Additionally, ROW exclusions on BLM land adjacent to coal mining on private land or State of Wyoming land infringes on private property and state property rights and rights of these non-federal owners to earn income from their land. This is particularly an important issue on lands in the checkerboard but also on other lands in Wyoming where non-federal and federal lands are adjacent to each other. Similarly, no surface access (NSO) stipulations will restrict access to coal deposits or leased coal reserves in an advanced state of being mined. This is a severe economic hardship on the mine and can also impact the customers of the mine that are depending on the mine for their coal supply. To simply relocate when blocked by a NSO stipulation is often not feasible. As stated in this section of the DEIS, these impacts to coal mining on BLM land result in less federal royalty payment. This affects not only income to the federal treasury but also impacts the portion of royalties that are returned to the states.

Page 4-105 Section 4.10.3 Coal Alternative 1 Wyoming Environmental Consequences – This section states that coal leasing in greater sage-grouse (GRSG) core, connectivity, and general habitat areas is open for consideration; WMA supports that. However, this is qualified by the statement that "Designating PHMA as 'essential habitat' for unsuitability evaluation would impact 338,533 acres. How many of these acres would be removed from leasing consideration is unknown and not clearly stated. We understand that core areas are essential for sage-grouse reproduction and population maintenance and growth, that connectivity areas are essential for genetic diversity, and that general habitat areas are necessary for year-round survival of the population. The Wyoming core area strategy has protections for these habitats in place and placing unsuitability designations on top of the Wyoming core area strategy will not provide needed additional protections but will lock up the coal resources on the lands that are designated unsuitable. The possibility of an unsuitable designation on top of Wyoming protective measures is unnecessary. The same applies to Alternative 2. Map 2-1 shows a sagebrush focal area in active coal mining areas in Lincoln and Uinta Counties, Wyoming. Sagebrush focal areas (SFA) would be eliminated under the other alternatives. Again, additional protective measures on top of the Wyoming core area strategy are unnecessary.

Page 4-105 Section 4.10.3 Coal Alternative 3 – Under this alternative all areas managed for sage grouse would be PHMA, much of which would be essential habitat. All PHMA would then be evaluated for unsuitability designation. Alternative 3 appears to place Areas of Critical Environmental Concern (ACEC) on top of PHMA in part of the same area that was a SFA under Alternative 1. Some of this area is an active coal mining area with active operations. Mining operations in this area must be able to comply with their BLM and private coal leases which require recovery of all coal that can be feasibly mined. The WMA believes that Alternative 3 is unacceptable. The Wyoming core area strategy provides adequate protections.

Page 4-106 Section 4.10.3 Coal Alternative 4 – Since the impact to coal development because of the risk of an unsuitable designation is the same as Alternative 1, this alternative represents unnecessary potential restrictions on top of the Wyoming core area strategy. Therefore, this alternative is unacceptable.

Page 4-106 Section 4.10.3 Coal Alternative 5&6 – Management and impacts are the same as alternative 4. Alternative 5 most implements similar measures as the Wyoming core area strategy but we believe that Alternative 2 is a better fit to current Wyoming management under the core area strategy. The WMA does not support any additional unsuitable designations for coal mining.

Locatable Minerals

Pages 4-106 - 4-110 Section 4.10.4 Locatable Minerals Nature and Type of Effects – Under Alternatives 1 and 3 the BLM can recommend to the Secretary that certain areas of sage grouse habitat can be withdrawn from location and entry under the Mining Law of 1872. The BLM could request that the Secretary propose a withdrawal under the Mining Law pursuant to Section 204(a) of FLPMA. Although we recognize that a withdrawal is not part of the land use planning process, we still consider it a significant step toward an actual withdrawal. This is acknowledged on Page 4-13 Minerals Management Section under Alternative 1 that after publication of Records of Decision (ROD) the BLM applied for withdrawals in all states under U.S. mining laws pursuant to Section 204 of FLPMA. The Secretary accepted the BLM application and BLM initiated the withdrawal process. For the BLM to recommend mineral withdrawals, except in very exceptional situations such as ESA listings, is not consistent with the BLM multiple use concept. It also sidesteps the ability of land users to work with the applicable BLM field office and other applicable state and federal agencies on development of plans that follow seasonal restrictions and employ other sage-grouse protection measures. Besides reducing the quantity of mineral available to be mined, a withdrawal will raise cost and risk to the operator even where a valid mining claim exists. This section of the DEIS acknowledges that requirements and costs will be higher for the operator mining a valid claim in a withdrawn area which could discourage an operator from mining the mineral and would have the same effect as a withdrawal where no valid mining claim exists.

BLM can also designate areas as Areas of ACEC in a Resource Management Plan (RMP). ACECs also impose greater requirements and costs on the operator. Again, rather than setting up ACECs in sage-grouse habitat, operators and the applicable BLM field office and other state and federal agencies should make site-specific plans for protection of sage-grouse and habitat using the Wyoming core area strategy. With locatable minerals, the value of the minerals and their importance to this nation's and to the world's energy future and to other strategic needs must be considered. This is especially important in Wyoming's bentonite and uranium areas. It would be just as important in lithium and rare earth mineral bearing areas. Minerals should not be precluded from production or alternative sources will likely be from overseas. Industry agrees with BLM's request for design features that benefit sage grouse and their habitat that are voluntarily implemented and then enforceable upon approval in the plan of operations. Alternative 6 will also potentially set up ACECs which will result in greater costs and requirements for operators. Alternative 2 is the most supportable for locatable minerals so WMA recommends Alternative 2.

Page 4-130 Section 4.12.1 Locatable Minerals Management - Locatable minerals in Wyoming include bentonite, uranium, lithium, gold, silver, rare earth minerals, and other essential minerals. Withdrawal of lands under the Mining Law of 1872 pursuant to FLPMA Section 204 will cause loss of mining related jobs in mining areas in Wyoming. A mineral withdrawal would work against the current administration's Green Energy Transition making it

more difficult for prospectors and operators to develop a domestic supply chain of minerals to the energy transition as well as critical, strategic, defense and essential minerals to the United States economy. This loss of jobs and tax base has a ripple effect through local economies in the affected counties. It also causes property taxes to increase to make up for tax revenue losses from reduced mineral production. Wyoming's sodium bentonite makes up approximately 70% of the world's bentonite. Wyoming bentonite is unique in the fact that it is sodium bentonite versus calcium bentonite. The quantity and quality of Wyoming bentonite is limited in the rest of the world. Most other bentonites being mined or available for production are not structured with sodium. High-swelling bentonite from Wyoming is nothing less than a critical mineral. It will also raise the price of bentonite used in industry, such as foundry clays, environmental uses such as drill hole plugging, geosynthetic liners, and other sealing purposes. It will also raise the price of consumer goods because bentonite is an ingredient in many consumer goods Including cat litter, and safe animal feed additives. Other socioeconomic impacts to locatable minerals and communities that depend on it are similar to those associated with leasable non-energy minerals. Mine and processing plant employees that are forced to leave the area to obtain other employment may never return if the industry recovers. It takes several years to train new employees to be a highly skilled, safe, and experienced workforce.

Bentonite is only one example of essential minerals that would be impacted by a mineral withdrawal. Other minerals supply industrial markets and consumer-based markets that will be negatively impacted by a mineral withdrawal. Rare earth minerals are essential for national defense and for renewable energy infrastructure. Uranium is essential for nuclear power generation. Nuclear power is an important growing source of low-carbon electricity.

Page 4-143 Section 4.12.2 Alternative 1 Locatable Minerals Management – This section states that a withdrawal is currently underway. We strongly recommend that withdrawal not proceed and new withdrawals not be proposed. Withdrawal under Section 204 of FLPMA would remove affected minerals from the possibility of development even if sage-grouse populations would recover. Site-specific protective measures are more appropriate. Alternative 2 is the same as Alternative 1.

Mineral Materials

Page 4-110 – Section 4.10.5 Mineral Materials – The WMA recommends Alternative 2 because it is the most consistent with current management in Wyoming under the core area strategy. We disagree with any land use restrictions that exceed the Wyoming core area strategy for mineral materials. We disagree with Alternative 3 as too restrictive; site-specific management decisions between operators and the applicable BLM field office should be made.

Alternatives

Alternative 1

Page 2-1 Chapter 2.2.1 Alternative 1 – Although this alternative reflects BLM's 2015 Approved RMP amendments it includes a recommendation to withdraw PHMA from mineral location and entry under the Mining Law of 1872. The WMA believes that this is unacceptable as it removes all flexibility to develop site-specific biologically sound solutions.

Alternative 2
As stated above, the WMA recommends that Alternative 2 be adopted in the BLM ROD. As the no-action alternative, we believe that it best reflects current management in Wyoming under Governor's Executive Order 19-3 and the core area strategy. In this case, no-action means continued action under an existing sound management plan.

Alternative 3
Alternative 3 is unacceptable and WMA recommends strongly that it be rejected. Though it provides for the lowest risk to sage grouse and sage grouse habitat, it provides no flexibility within the BLM multiple use concept. Alternative 3 designates all sage grouse habitat as PHMA and closes these areas to mineral leasing and locating. BLM would recommend withdrawal of PHMA from mineral entry under the Mining Law of 1872. These lands would become exclusion areas to ROWs. These actions will reduce the quantities of essential minerals and energy minerals that are available. The WMA believes that Alternative 3 is unworkable in the KSLA because the trona cannot be mined anywhere else. Trona mined in the Wyoming KSLA is processed into natural soda ash. Should the United States impede domestic production of soda ash, global competitors, like China, will increase their share of the market. These alternative sources will be synthetic soda ash which has a higher production cost than natural soda ash. The process for manufacturing synthetic soda ash has higher total emissions and greenhouse gas emissions. To opt for soda ash sources with higher emissions when domestic natural soda ash sources with lower emissions are available is a step in the wrong direction. The Wyoming core area strategy with site-specific consideration of projects should be followed. Alternative 3 is the most restrictive alternative and will result in overreach.

Pages 2-118-119 Table 2-14 – Alternative 3 would add 839,225 acres of ACECs in Wyoming. This is 1.33% of the land area in Wyoming. The BLM will recommend all PHMA for withdrawal under the Mining Law of 1872 for locatable minerals. The withdrawal process is not a land use planning process and would be proposed by the Secretary. The recommendation for withdrawal by the BLM is a step in the direction of a withdrawal and is not necessary and should not be taken. Leasing of non-energy minerals would be closed under this alternative. This also is not necessary for sage-grouse protection given that the State of Wyoming has an effective program of protection. Closing leasing of non-energy minerals is also very detrimental to the supply of essential minerals, some of which are essential raw materials used in national defense. Closing non-energy mineral leasing in the KSLA must not happen because the trona cannot be replaced by other domestic supplies. PHMA would also be an exclusion area for ROWs. This is effectively the same thing as limiting mineral development because of the need for surface facilities for underground mining.

Page ES-4 Section ES.4.3 – The Executive Summary states that under Alternative 3 wild horse and burro herd management areas that overlap PHMA would be redesignated to a herd area. PHMA would be unavailable to livestock grazing. Withholding livestock grazing would not be a sound range management practice. Grazing at a proper stocking rate removes enough annual herbage growth to prevent a buildup of standing dead herbage. On rangelands populated by wild horses, the land will be grazed and occupied by wild horses if livestock are removed. A proper stocking rate, not exclusion of livestock grazing, is appropriate.

Page 2-3 Chapter 2.2.3 Alternative 3 – This alternative would update Habitat Management Areas (HMA) to PHMAs and then close PHMAs to mineral locating and leasing. This is too restrictive and eliminates any opportunities for flexibility. This will also work cross purpose with Administration solar energy goals in that minerals that are critical as raw materials for solar energy infrastructure could be closed to development. The WMA believes that this is unacceptable and unnecessary because it adds additional restrictions on top of the Wyoming core area strategy.

Alternative 4
The WMA believes that Alternative 4 is unacceptable because it creates more PHMA than the Wyoming core area strategy. This enlargement of PHMA is made by adding additional BLM PHMA areas to Wyoming core areas.

Alternative 5
Alternative 5 has much in common with the Wyoming Governor's Executive Order 19-3 of 2019. However, WMA recommends Alternative 2 rather than Alternative 5 because Alternative 2 best reflects current management in Wyoming under the Wyoming core area strategy. Alternative 5 in its present form would add no new ACECs for sage grouse, which WMA agrees with. However, adding new ACECs under this alternative is not precluded in the ROD.

Alternative 6
Alternative 6, like Alternative 3, would establish 839,225 acres of ACECs in Wyoming. Alternative 6 is also closed to new leases and expansions of existing operations for non-energy minerals. The WMA believes that this is totally unacceptable and would greatly limit expansion of trona mining within the KSLA. This will limit production of soda ash, an essential mineral, and have a great negative impact on economies and communities in Sweetwater, Uinta, and Lincoln Counties in Wyoming. The right to expand trona operations in the KSLA must be protected within the guidelines of the Wyoming Governor's Executive Order 19-3. WMA recommends that Alternative 2 best preserves this balance.

The WMA recommends that Alternative 6 not be accepted. It would establish new ACECs in PHMAs. Even though Alternative 6 is similar to Alternative 5, rather than applying additional ACECs as a protective measure, the protective measures should be applied that are from the Wyoming Governor's Executive Order 19-3, SGIT, and WGFD.

Specific Comments on Draft EIS Sections
Page 2-6 Table 2-1 Alternatives Proposed During Public Scoping but Not Analyzed in Detail – It is noted in this table that among alternatives proposed were alternatives that consider optimizing the domestic development of minerals and balancing economic, social, and conservation considerations. These were dismissed for being inconsistent with the purpose and need of addressing habitat losses and population declines and being too general to develop an alternative around. However, these seem to be consistent with the BLM traditional multiple use concept. New scientific information informs how the multiple use concept is to be applied in present times. WMA recommends that these concepts be applied within Alternative 2. Administration goals for development of renewable energy as part of a climate action plan will require the Administration and BLM to take a closer look at the amount of domestic minerals necessary for manufacturing of renewable energy infrastructure. It should be acknowledged that this will require taking a balanced view of successful protection

of greater sage-grouse habitat and populations as well as the economic and social needs of society as well as national defense.

Page 2-15 Table 2-4 Comparison of Alternatives, Habitat Management Area Alignments, Associated Major Land Use Allocations, and Non-Habitat – Alternative 3 closes PHMA to non-energy minerals. The WMA believes that this is unacceptable because it removes all flexibility to mine underground and manage surface disturbances in ways that would minimize or eliminate impacts to greater sage-grouse and their habitats.

Page 2-26 Section 2.5.4 Application of Habitat Objectives - AIM is not in the List of Acronyms and Abbreviations or in the Glossary and it should be. This forces a reviewer has to search for a definition.

Page 2-99 Section 2.5.9 Minimizing Threats from Predators – U.S. Fish and Wildlife Service 2023 is cited but it is not in the Literature Cited section. This appears to be an important information source because it provides the U.S. Fish and Wildlife Service (USFWS) raven control strategies.

Page 2-120 – 2-128 Section 2.5.13 Adaptive Management – The WMA recognizes and supports the importance of using monitoring data to identify negative (as well as positive) trends in sage-grouse populations and habitat. This is a necessary part of a strategy to prevent the need for listing sage-grouse under ESA. This section emphasizes annual sage grouse population data collected by each state's game and fish agency and habitat monitoring done by the Landfire model and Habitat Assessment Framework. This method will identify soft and hard thresholds. Action criteria are in Table 2-15. The concept appears to be sound and potentially effective at identifying sage grouse population declines and habitat losses before they become beyond the point of near-term recovery. On lands that are within mine leases, mine permits, or candidate areas for future solid mineral leasing and permitting, the holders of valid existing rights and logical future lessees and permittees need to be included in the monitoring and adaptive management process. These operators have large investments in existing infrastructure and also have important decisions to be made about future investments in order to serve their customers. In the case of coal leasing, non-energy mineral leasing, locatable minerals, and saleable minerals the processes for monitoring and adaptive management need to be discussed with operators before implementation. Operators should be included in the process. The process should be cooperative among all of these parties. This is particularly important in the KSLA as the trona cannot be mined elsewhere. This must also be the case in land ownership arrangements such as the checkerboard where access to private land is necessarily via rights of way over BLM sections. The monitoring and adaptive management process can and should work but operators must be brought to the table in the design phase of the process so as to protect operators from risks of idled operations or stranded investment. The design phase of the monitoring and adaptive management process must also take into account natural sage grouse population cycles and the length of those cycles and the natural effects of drought. In applying monitoring and adaptive management it must also be considered that it might not identify a causal factor and in such cases additional land use restrictions should not be implemented. Wyoming collects annual data on sage grouse populations. Actual data, as collected in Wyoming, is a better and a more acceptable method of estimating population sizes and trends than modeling.

Page 4-5 Lands and Realty Management. – The WMA strongly urges that there be no Right of Way exclusions in KSLA because of the unique and irreplaceable value and importance of the trona mining and processing area. Rights of way are needed for surface infrastructure to support underground mining and for access to private mineral on adjacent private sections. Trona cannot be mined in another location. Soda ash is an essential mineral as a raw material for renewable energy infrastructure. Rights of way issuances should be handled on a site-specific basis.

Page 4-9 Predator Management. – This section notes that human subsidies can attract predators and increase their numbers. This section also notes that raven populations have increased by 293% in greater sage grouse range between 1966 and 2018 (Harju et al 2021). This is recent research and further research may suggest that ravens could be the largest impact on sage-grouse chick survival. We recognize that loss or fragmentation of sagebrush habitat has impact on sage grouse populations. However, this section notes that raven populations have significantly increased and their population is not controlled. Recent industry experience is that permits for raven control are more difficult to obtain than in recent years or even impossible to obtain. Raven populations are increasing while sage grouse populations are decreasing in sagebrush habitat. The USFWS should be encouraged to resume authorizing raven take permits in habitats that support sage grouse. Permits should be issued in such a way that raven populations are managed for lower numbers but not for elimination. The USFWS also has other predator control programs and guidance, such as coyote control/management, that should be employed. The USDA should expand their raven control program in Sweetwater County, Wyoming. Sage-grouse protection and enhancement programs should focus on sagebrush habitat but not only on sagebrush habitat. Every factor that can contribute to enhancing sage grouse populations should be explored and implemented in a balanced manner. An important factor would be raven control. Raven roosts at industrial facilities are a health hazard for employees. Reasonable controls should be considered and implemented. Every predator control option that is available should be employed in a balanced manner. Holders of BLM grazing allotments should be educated to locate sheep camps away from sage grouse leks during the strutting season (March 1 – May 7). Additional factors that can reduce impacts to sage grouse survival and breeding success should be incrementally applied.

Appendix 3 Section 3.7 Wyoming pp. 3-21 – 3-23 – Wyoming's final draft core area map was utilized in the development of DEIS Alternatives 5 and 6. Alternative 4 places a larger land area into PHMA since this alternative adds BLM's polygons to Wyoming core area polygons. Therefore, the WMA believes that Alternatives 5 and 6 are more acceptable than Alternative 4 because Alternatives 5 and 6 reflect the Wyoming core area strategy with no BLM additions. Alternative 3 sets up the largest additions onto Wyoming's core areas as GHMA and Stewardship Habitat Management Areas (SHMA) and PHMA will all be managed as PHMA. Alternatives 1 and 2 are the same as Wyoming core areas. Therefore, Alternative 2 is the Alternative that WMA recommends. Alternatives 5 and 6 put more emphasis on lek count data and on existing and potential disturbance than Alternative 4 and so are more focused on leks with the highest percentage of WY's sage grouse population. Revisions of PHMA (and Wyoming core) that are no longer sage grouse habitat due to prolonged absence of a sage grouse population are considered in Alternatives 4, 5, and 6.

Page 5-43 Appendix 4 Wyoming GRSG ACEC Importance Evaluation: Carter-Crook GRSG Connectivity Proposed ACEC – This area is rated as important for genetic linkage between the northeastern and central and western portions of sage-grouse range. This area should be managed under the State of Wyoming core area strategy and not as an ACEC. Bentonite is a valuable mineral resource that occurs in only a few geographic areas. It has many industrial and consumer product uses. As bentonite is mined, it is necessary to develop new mining areas. Contemporaneous reclamation is done when possible. Projects should be evaluated and protective measures applied on a site-specific basis.

Page 5-45 – 5-46 Appendix 4 Wyoming GRSG ACEC Importance Evaluation: Sagebrush Focal Areas in South-Central and Southwestern Wyoming Proposed ACEC – This area is rated as important. This area also should be managed under the State of Wyoming core area strategy and not as an ACEC. Part of this area is an active coal mining area with well established infrastructure. The operators need to be able to continue in the existing mining area and expand when necessary. Contemporaneous reclamation will be done when possible. Projects should be evaluated and protective measures applied on a site-specific basis.

Pages 5-1 and 5-51 Appendix 4 Sections 5.2 and 5.5 – These sections note that even if relevance and importance criteria are met it does not necessarily mean that an ACEC should be designated. The State of Wyoming core area strategy is sufficient for the protection of sage-grouse and their habitat without the designation of more ACECs.

Page 6-2 Appendix 6 – It is noted on this page that the National Technical Team (NTT) in making their recommendations probably did not take into account the specific process under 43 CFR 4361 to determine an area unsuitable for surface coal mining. What was also probably not taken into account are two other factors. One is that even on large leases, modern mining methods do not feasibly lend themselves to bypassing coal in an area being mined. Another is that, while some unsuitable determinations are based on habitat that may be impossible to reclaim to the same habitat services, sagebrush grassland habitat for sage-grouse can be and is reclaimed and revegetated. It is noted in other sections of the DEIS that recovery of these habitats after revegetation takes many years. It should be noted that mine operators have been reclaiming these habitats for many decades under SMCRA and the Wyoming EQA and these lands are being bond released under the standards of these laws. Sage-grouse habitat requirements are being met in these mine revegetation efforts. Mining is an interim land use. Unsuitable designations are unnecessary for an interim land use where necessary habitat services are demonstrated to be reclaimable.

Page 13-3-10 Appendix 13 Figure 8 Federal Disbursements to States from Coal Extraction, Fiscal Years 2018–2022 – In 2022 federal disbursements to Wyoming were just under $200 million. Clearly, royalty returns from coal production on BLM lands in Wyoming are very important to the Wyoming economy and to local communities in Wyoming.

Appendix 13 Page 13-3-8 Section 3.1.2 Coal and Page 13-3-11 Section 3.1.3 Nonenergy Leasable Minerals and Page 13-3-13 Section 3.2 Locatable Minerals – Economic data are presented for minerals on BLM lands. However, on lands in the checkerboard in Sweetwater County, Wyoming, where odd-numbered sections are private and two of the even numbered sections in each township and range are State mineral, private lands are surrounded on all

four sides of each section by federal lands and State sections on two sides. Trona and coal are mined on the checkerboard lands. The DEIS and this appendix do not address economic values of minerals on non-federal lands that are surrounded by federal lands. Economic impacts to mineral development on non-federal lands caused by actions on adjacent federal lands need to be addressed and are not. The same situation occurs on other lands in Wyoming where nonfederal lands are adjacent to federal lands. The economic impact to non-federal mineral is not addressed or quantified and should be. This is a serious deficiency in the socioeconomic analysis and WMA requests that it be addressed in the final EIS.

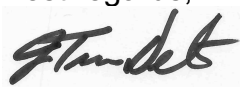
Page 13-A-125 Appendix 13 Table A-28 State Policies for Distributions of Federal Mineral Revenue – This table shows how Wyoming distributes its share of federal mineral revenues to highways, community colleges, and public school capital construction. Wyoming highways benefit the traveling public of all states. Wyoming community colleges have students enrolled from not only Wyoming but other states and foreign countries. Quality public school education is and should be a national priority. These benefits to the Wyoming public and a much wider public are partially funded by Wyoming's share of federal mineral revenues. These revenue streams need to be preserved for the benefit of people. The Wyoming core area strategy which is consistent with current management under Alternative 2 is the way to protect these revenue streams and manage the sagebrush habitat for healthy sage-grouse populations.

Conclusion

As stated in several sections of this document, the products of the mining industry provide essential raw materials for industry, vital raw materials for the renewable energy industry, essential raw materials for national defense, and ingredients for essential consumer products. Mining products are vital and essential to the technological advancements this nation and the world needs and desires. The WMA feels strongly that it must be recognized that both the positive and negative impacts to sage-grouse and habitat should be identified in this DEIS. The question here is how to limit or reduce negative impacts while embracing positive impacts. WMA feels that negative impacts can be reduced or mitigated but positive impacts, once removed, are difficult to regain. The goal should be to accomplish both and to serve all land uses. Therefore, managing the impacts on sage-grouse and on sagebrush habitat must be a multi-faceted and collaborative effort.

Thank you for your kind consideration.

Best regards,



Travis Deti
Executive Director

CC: The Honorable Mark Gordon, Governor of Wyoming
The Honorable John Barrasso, MD, United States Senator
The Honorable Cynthia M. Lummis, United States Senator
The Honorable Harriet Hageman, United States Representative
Ms. Katie Sweeney, National Mining Association

June 13, 2024

VIA ePLANNING PORTAL

BLM Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, Utah 84101

Re: 2021 Greater Sage-grouse Land Use Plan Amendments (DOI-BLM-WO-2300-2022-0001-RMP-EIS)

Dear Bureau of Land Management:

Oregon Natural Desert Association ("ONDA") provides these comments on the Bureau of Land Management's ("the Bureau" or "BLM") Greater Sage-grouse Land Use Plan Amendment Draft Environmental Impact Statement ("DEIS").[1]

ONDA is a public interest conservation organization whose mission is to protect, defend, and restore Oregon's high desert for current and future generations. We are the only organization dedicated exclusively to conserving Oregon's desert lands, waters, and wildlife, and we have been involved in greater sage-grouse (hereafter "sage-grouse") conservation on desert public lands for over 35 years. ONDA represents more than 25,000 members and supporters in Oregon and across the United States who regularly use and visit BLM public lands. The management, conservation, and restoration of these lands and resources—and, especially, sage-grouse and sagebrush habitats—is of significant interest to our members, supporters, and staff for professional, personal, recreational, aesthetic, spiritual, and other reasons.

This planning process is vital to the conservation and recovery of sage-grouse populations range-wide. The plan amendment is especially important in Oregon, where Bureau public lands comprise the vast majority (more than 12 million acres) of remaining sage-grouse habitat in the state and where populations have declined *by nearly half statewide* since 2003. The Oregon Department of Fish and Wildlife ("ODFW") estimates there are only 15,409 birds remaining in Oregon today (Vold 2023)—a 20 percent decline just since the Bureau adopted its Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment in 2015 ("2015

[1] Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning, 89 Fed. Reg. 18,963 (Mar. 15, 2024).

ARMPA") that was intended to serve as a "paradigm shift" in how the agency manages this imperiled bird's habitat on western public lands.[2]

The sage-grouse population in Oregon represents the western-most extent of this species; occupies one of the six most important strongholds remaining for sage-grouse range-wide; is strongly connected both within the state, as well as to sage-grouse populations in other states; and helps to preserve genetic diversity that is essential to the species' persistence. Moreover, scientists understand that "[c]onservation actions for [sage-grouse] are frequently considered as an 'umbrella'—benefitting other sagebrush species that often lack data or resources for development of individual conservation strategies" throughout the West's sagebrush habitats (Remington *et al*. 2021) (U.S. Geological Survey report in which sage-grouse experts identify more "than 735 species of plants, vertebrates, or invertebrates inhabiting the sagebrush biome in the Great Basin alone").

In our scoping comments, ONDA recommended a set of 17 interrelated, successive and synergistic conservation measures to reverse sage-grouse population declines in Oregon based on our more than 50 years of combined experience studying and advocating for the species. With few exceptions, the BLM failed to adopt any of our recommendations in the preferred alternative. Not only that, the preferred alternative rolls back protections provided in the 2015 ARMPA by eliminating Sagebrush Focal Areas; eliminating or downsizing Key Research Natural Areas, undermining their purpose and value to range-wide conservation of sage-grouse; weakening the habitat disturbance cap adopted in Oregon; reducing the conservation standard for renewable energy development and other major rights-of-way in sage-grouse priority habitat.

As currently presented, ONDA does not support the Bureau's preferred alternative. The agency should make the changes described in this letter and associated comments in order to make a scientifically and legally defensible conservation plan that can serve to actually support the survival and recovery of greater sage-grouse in Oregon and range-wide.

Priority habitat management area in Oregon

The Bureau identified 9.2 million acres of Priority Habitat Management Area ("PHMA") in Oregon in the preferred alternative in the DEIS. This "newly modeled core habitat" was based on direction and data provided by ODFW (BLM 2024 DEIS: 3-14) in lieu of finalized habitat designations from the state. ODFW was still completing its updated sage-grouse habitat designations at the time the DEIS was prepared. ODFW has since finalized its core habitat maps for sage-grouse (ODFW 2023). Described as "core" habitat, and later identified as "Priority Areas for Conservation" ("PAC"), the state agency's scrutinous, science-based process found nearly 8 million acres of highest-value priority habitat across all landownerships statewide. *See*

[2] *See* 12-Month Findings on a Petition to List Greater Sage-Grouse (*Centrocerus urophasianus*) as an Endangered or Threatened Species, 80 Fed. Reg. 59,858, 59,875 (Oct. 2, 2015) (USFWS describing that the 2015 sage-grouse conservation plans "represent a paradigm shift in western Federal lands management"). ODFW found that, by 2023, the statewide population had decreased to 15,409, a 47.5 percent decline from the 2003 baseline of 29,327 birds. The ODFW Annual Reports are available at https://www.dfw.state.or.us/wildlife/sagegrouse/population.asp.

Map A ("ODFW Greater Sage-Grouse Priority Areas for Conservation (PAC) vs. BLM Alternative 5 Priority Habitat Management Area (PHMA)").

The Bureau recognized in the DEIS, and confirmed in successive communication, that the agency "anticipates using the final ODFW habitat designation maps to the maximum extent possible as a replacement of our draft PHMA and GHMA in the action alternatives in the BLM Final EIS" (BLM 2024 DEIS: 3-14). Notably, ODFW identified an additional 382,265 acres of priority habitat beyond PHMA in the Bureau's preferred alternative. The Bureau should fully adopt ODFW's PACs as PHMA. The Bureau should also retain the nearly 1.7 million acres of PHMA it identified in its preferred alternative that are *in addition to* ODFW's PACs. The sagebrush ecosystem is among the most vulnerable in North America.[3] The sage-grouse is in danger of extirpation from fragmentation and loss of its sagebrush habitat and increasing isolation of populations due to human activities, including livestock grazing, energy development and transmission, and expanding motorized transportation networks. 80 Fed. Reg. at 59,871, 59,887; *see also id*. at 59,934 (USFWS emphasizing "the preservation of large expanses of undisturbed habitat supporting the largest, best-connected sage-grouse populations into the foreseeable future").

Disturbance management cap in Oregon

The 2015 ARMPA set a cap on identified anthropogenic disturbance in PHMA at no more than 3 percent of the land surface—and not to exceed more than 1 percent additional disturbance per decade—in each ODFW PAC (BLM 2024 DEIS: 2-OR-4, Table 1). Noting that even 3 percent habitat disturbance may be too high to support sage-grouse persistence,[4] the preferred alternative does not explicitly retain the 1 percent regulator on additional disturbance per decade in each PAC. There is no mention of this integral measure in the DEIS's analysis of disturbance caps (BLM 2024 DEIS: 2-29 – 2-39, Table 2-7), and it is unclear if the 1 percent regulator will simply be retained from the 2015 ARMPA (*see* BLM 2024 DEIS: 2-OR-4, Table 1). The Bureau should explicitly retain the 1 percent regulator as a key component of managing sage-grouse habitat in eastern Oregon, in support of federal and state conservation goals for what is one of the last remaining strongholds for the species.

Fuel break strategy, design and implementation

The 2015 ARMPA directs BLM to "[d]evelop a system of fuel breaks to protect larger intact blocks of Greater Sage-grouse habitat. Locate these fuel breaks along existing roads and ROWs, where possible" (BLM 2015 ARMPA: 2-16, MD FIRE 11). But the plan also contemplates additional research and review in assessing whether and where to use fire breaks.

[3] 12-Month Findings for Petitions to List the Greater Sage-Grouse (*Centrocerus urophasianus*) as Threatened or Endangered, 75 Fed. Reg. 13,910, 13,916, 13,923, 13,957 (Mar. 23, 2010).

[4] The scientific record supports adopting a lower percentage disturbance cap as described in comments submitted by Advocates for the West, American Bird Conservancy, Center for Biological Diversity, Earthworks, Great Old Broads for Wilderness, Oregon Natural Desert Association, Prairie Hills Audubon Society, Public Employees for Environmental Responsibility, WildEarth Guardians, Western Shoshone Defense Project, Western Watersheds Project, and Western Wildlands Conservancy.

For example, in addition to the management directive that uses "develop," required design features and best management practices in the ARMPA indicate that BLM should "design" fuel breaks in "areas of high fire frequency" and "incorporate key habitats or important restoration areas . . . in fuel break design" (BLM 2015 ARMPA: C-5). Other sections discuss "implementation" of "strategic" fuel breaks.

There continues to be a dearth of peer-reviewed, published science definitively establishing the efficacy of fuel breaks in sagebrush steppe. Even in 2020—five years after the 2015 ARMPA was adopted—the "BLM acknowledge[d] the lack of peer-reviewed science on the ecological effects of linear fuel breaks" (BLM 2020 Tri-State FEIS: 8). The current planning process should take the opportunity to provide or direct development of risk-based, landscape-scale strategy for determining the efficacy and necessity of fuel breaks. There are myriad factors to consider, but new information is available that directly informs these core analytics and risk assessment. *See* Appendix D.

* * *

ONDA has been working to conserve sage-grouse in Oregon as a core part of our mission since the 1980s—including the last decade under the 2015 ARMPA. In our scoping comments, we identified seven priorities comprised of 17 conservation measures for strengthening the Bureau's management of the species and its habitat in Oregon. Following is our analysis of those prescriptions in the agency's preferred alternative in the DEIS.

1. Identify and conserve greater sage-grouse late brood-rearing habitat

1.1. Late-brood Rearing Habitat

ONDA recommended in our scoping comments that the Bureau of Land Management…

Identify and prescribe appropriate management direction to conserve late brood-rearing habitats, including mesic habitat and riparian zones.

The draft environmental impact statement…

Fails to identify sage-grouse late-brood rearing habitat in Oregon, and despite available datasets to do so. Notably, if the Bureau proceeds to adopt a combination of PHMA in the preferred alternative and ODFW's new core habitat as PHMA in the proposed plan, it will encompass 94 percent of high and medium use late brood-rearing/summer habitat for sage-grouse as priority habitat, as determined by Henderson (2019). *See* Map B ("Sage-Grouse Summer Habitat and ODFW and BLM-Identified Priority Habitat"). Alternatively, if the Bureau only adopts ODFW's new core habitat as PHMA, it will encompass 93 percent of high and medium use late brood-rearing/summer habitat for sage-grouse as priority habitat, as determined by Henderson (2019). *See* Map C ("Sage-Grouse Summer Habitat and ODFW-Identified Priority Habitat").

The preferred alternative in the draft environmental impact statement…

Identifies state-specific "habitat indicators" for late brood-rearing habitats (*see* BLM 2024 DEIS, Appendix 8), but the Bureau provides no specific management objectives or directives for maintaining late-brood rearing habitats. The DEIS carries forward many of the same habitat objectives (now indicators) the Bureau adopted in the 2015 ARMPA and includes several relevant additions, including establishing a 2 percent cap on invasive annual grass cover, no conifer present, and 2–4 percent forb cover (depending on site characteristics) for late-brood rearing/summer habitat (BLM 2024 DEIS: 8-17). However, the DEIS removes the habitat objective for 70–75 percent of seasonal habitat within 4.0 miles of leks meeting a majority of the desired conditions (depending on site characteristics). Moreover, the Bureau indicates that the preferred alternative, like alternative 4, would update habitat objectives "based on best available science which would reinforce current or provide new thresholds" for management—yet provides no framework for how and when this update would occur nor how the "best available science" would be determined (BLM 2024 DEIS: 4-44). But even with a more inclusive set of indicators and more clarity about how they might be updated, without mapped seasonal habitats, land managers would be left without a pathway for implementing measures to conserve them in any case.

The best available science indicates that high quality, late brooding-rearing habitats are key to maintaining viable sage-grouse populations.

Late brood-rearing habitats are often considered a population-limiting habitat type due to their strong influence on chick survival, and by extension, population growth (Taylor *et al.* 2012; Dahlgren *et al.* 2016; Street 2020). Within the Great Basin, researchers have estimated that late brood-rearing habitats comprise less than 2 percent of sage-grouse habitats (Atamian *et al.* 2010). Street (2020) found that less than 5 percent of habitats associated with 24 lek sites in southeastern Oregon and northern Nevada were considered high quality late brood-rearing habitat. Yet, little is known about the location and condition of many late brood-rearing habitats in Oregon. This limits the ability of land managers to prescribe and apply appropriate conservation measures to these finite resources. As Street (2020: 60) suggests, "[i]dentifying habitats associated with key life history stages is critical for the management of species of concern."

Recommendation: The Bureau should utilize available data and relevant new research to map this important seasonal habitat to ensure they are appropriately considered and provide land managers with the information needed to implement conservation measures. Additionally, the Bureau should amend its proposed habitat indicators to include available suitable habitat objective from the 2015 ARMPA, which provides important management direction on maintaining high quality habitat to support sage-grouse populations.

1.2. Riparian Restoration

ONDA further recommended in our scoping comments that the Bureau of Land Management…

Identify appropriate areas for restoration of riparian zones and associated mesic habitats, including through restoration of beaver.

The draft environmental impact statement…

Fails to propose a strategy for riparian restoration, including the reintroduction of beaver as an effective method in achieving more functional riparian and mesic habitats.

The preferred alternative in the draft environmental impact statement…

Broadly directs that "all states would include language to maintain and enhance sagebrush habitats with the intent of conserving [sage-grouse] populations" (BLM 2024 DEIS: 4-37) clarifying that "[t]he updated language would allow for flexible management that could identify problems sooner" (BLM 2024 DEIS: 4-44).

The best available science indicates that riparian restoration, including restoration of beaver and creation of beaver-managed floodplains, is an effective, low-cost method of improving damaged riparian habitats.

Beaver-managed floodplains can create and maintain mesic habitats in arid landscapes critical to sage-grouse (Fesenmyr *et al*. 2018; Silverman *et al.* 2018). The geographic extent of these beaver-managed systems is potentially vast and highly ecologically productive. They could be especially important for addressing current limitations on sage-grouse vegetative and invertebrate food sources, and especially during increasingly frequent, extended and severe drought conditions when these limitations are most extreme (NRCS SGI; Donnelly *et al.* 2016). Beaver managed floodplains also provide refugia to wildlife and flora during increasingly frequent and severe wildfires, thereby providing for faster and more comprehensive ecological recovery of adjacent landscapes and populations following wildfire (Fairfax and Whittle 2021).

Recommendation: The Bureau should incorporate a robust habitat restoration program in its proposed plan that includes the reintroduction of beaver to improve riparian resources.

2. Identify and conserve greater sage-grouse winter habitat

ONDA recommended in our scoping comments that the Bureau of Land Management…

Identify and conserve greater sage-grouse winter habitat in Oregon.

The draft environmental impact statement…

Fails to identify sage-grouse winter habitat in Oregon, and despite available datasets to do so. Notably, if the Bureau proceeds to adopt a combination of PHMA priority habitat management area in the preferred alternative and ODFW's new core habitat as PHMA in the proposed plan, it will encompass 89 percent of high and medium use winter habitat for sage-grouse, as determined by Henderson (2019). *See* Map D ("Sage-Grouse Winter Habitat and ODFW and BLM-Identified Priority Habitat"). Alternatively, if the Bureau only adopts ODFW's

new core habitat as PHMA, it will encompass 86 percent of high and medium use winter habitat for sage-grouse, as determined by Henderson (2019). *See* Map E ("Sage-Grouse Winter Habitat and ODFW-identified Priority Habitat.").

The preferred alternative in the draft environmental impact statement…

Only broadly directs that "all states would include language to maintain and enhance sagebrush habitats with the intent of conserving [sage-grouse] populations" (BLM 2024 DEIS: 4-37). The DEIS carries forward many of the same habitat objectives (now indicators) the Bureau adopted in the 2015 ARMPA and includes the relevant addition of no conifer present as an indicator (BLM 2024 DEIS: 8-17). However, the DEIS removes the habitat objective for 70–85 percent of wintering habitat meeting a majority of desired conditions (depending on site characteristics). Moreover, as with late brood-rearing habitat, the Bureau indicates that the preferred alternative, like alternative 4, would update habitat objectives "based on best available science which would reinforce current or provide new thresholds" for management, yet provides no framework for how and when this update would occur nor how the "best available science" would be determined (BLM 2024 DEIS: 4-44).

The DEIS would not specially protect winter habitat and rather carry forward a handful of fire management measures and seasonal limitations on anthropogenic disruption in winter habitat from the 2015 ARMPA (BLM 2024 DEIS: 2-OR-7, 2-OR-17, 2-OR-20, 2-OR-42, Table 1). Importantly, limitations on anthropogenic *disruption* in winter do not actually protect habitat from *disturbance* from land use during spring or summer that can degrade or eliminate habitat so that it is no longer available to sage-grouse the following winter. Without mapped seasonal habitats, land managers would be left without a pathway for implementing measures in any case. *See, e.g.*, *ONDA v. Jewell*, 840 F.3d at 571 (holding BLM approval of an energy project on Steens Mountain to be unlawful because "with the impacts on sage grouse not properly established, the BLM did not know what impacts to mitigate, or whether the mitigation proposed would be adequate to offset damage to wintering sage grouse").

The best available science on sage-grouse conservation indicates that high quality, accessible winter habitat is key to maintaining viable sage-grouse populations.

Winter habitat areas are vital to sage-grouse survival (Connelly *et al*. 2011). *See also Or. Nat. Desert Ass'n v. Jewell*, 840 F.3d 562, 566 (9th Cir. 2016) ("Sagebrush habitat is . . . essential for winter survival of sage grouse."). ODFW has determined that winter habitat is "critical to the persistence of the species" (Hagen 2011). Doherty *et al*. (2008) concluded that "[i]mpacts to wintering habitat may have disproportionate effects on regional population size and persistence." The National Technical Team ("NTT") explained that sage-grouse show high fidelity to winter concentration areas and that "loss or fragmentation [of these areas] can result in significant population impacts" (NTT 2011: 37). In fact, a single wintering area may support several different breeding populations (*i.e.*, populations of males and females that use different breeding and nesting habitats in spring) (Oregon 2013 DEIS: 8-39; NTT 2011: 51). Any loss or degradation of critical wintering range can thus be detrimental to sage-grouse populations (Karl and Sadowski 2005). Loss of winter habitat is also deemed *irreversible*: as ODFW has noted,

"there are no studies or methods for restoring or creating winter habitat if it is lost" (Hagen 2011: 83, citations omitted).

Sage-grouse winter habitat must provide tall, healthy sagebrush for food and cover to support the birds throughout the season (Braun *et al*. 2005; Connelly *et al.* 2011, citing others). As the Bureau has described, "[d]uring the winter months, [the] greater sage-grouse's diet consists almost entirely of sagebrush leaves and buds" (North Steens Transmission Line 2011 FEIS: 3.5-23). Sage-grouse in the winter months "tend toward areas with high canopy and taller sagebrush plants. . . . Sagebrush must be exposed at least 9.8 to 11.8 inches (25 to 30 cm) above the snow level to provide adequate forage and cover" (North Steens Transmission Line 2011 FEIS: 3.5-23). Wintering areas are often on windswept ridges, south-facing slopes or in protected draws where sagebrush is not completely covered in snow (Braun *et al.* 2005; Wyoming 2014 FEIS: 98-99). These landscape features may be geographically limited in some areas (e.g., Beck 1977). Big sagebrush communities typically used for winter habitat are also becoming increasingly rare in the West (Welch 2005).

Moynahan *et al.* (2007) observed that the quality of winter habitat appears to influence the abundance and condition of female sage-grouse and their nesting effort and clutch sizes in spring. Healthier females are more likely to have larger clutches and re-nest in case of nest failure (i.e., from predation). Given the importance of winter habitat, the loss or fragmentation of these areas can have a disproportionate impact on sage-grouse population size locally and regionally (Caudill *et al.* 2013; Oregon 2013 DEIS: 8-39).

Recommendation: The Bureau should utilize available data and relevant new scientific research to map winter habitat to ensure that all areas are appropriately considered and land managers have the necessary information to conserve this critical seasonal habitat. Additionally, the Bureau should amend its proposed habitat indicators to include the available suitable habitat objective from the 2015 ARMPA, which provides important management direction on maintaining high quality habitat to support sage-grouse populations.

3. Mitigate climate change impacts on sage-grouse and sagebrush habitats

3.1. Analyze Climate Change

ONDA recommended in our scoping comments that the Bureau of Land Management…

Analyze direct, indirect and cumulative effects of climate change on greater sage-grouse and sagebrush habitats.

The draft environmental impact statement and the preferred alternative…

Provide a discussion of the "[i]nteractions [b]etween [c]limate [c]hange, [w]ildfire, and [i]nvasive [s]pecies]," acknowledging that "[d]ecreases in sagebrush cover [are] projected across much of its range," particularly in lower elevation sites with warmer, drier conditions (BLM 2024 DEIS: 3-9). Additionally, droughts impacting the timing and availability of forage, reduced mesic resources, and "invasion by exotic annual grasses" (BLM 2024 DEIS: 3-9) have

contributed to increased occurrence of and larger wildfires in sagebrush habitats (BLM 2024 DEIS: 3-19), presenting significant challenges to sage-grouse conservation and management. However, the DEIS falls short of analyzing the impacts of climate change on sage-grouse under each alternative.

The best available science recognizes climate change as a threat to sage-grouse and that without active management, sagebrush steppe will continue to experience significant losses.

Most climate change simulations predict sagebrush steppe will contract as mean temperatures increase and the frost line shifts northward (Balzotti *et al.* 2016; Blomberg *et al.* 2012; Neilson *et al.* 2005). In the worst case scenario, sagebrush species are simulated to decrease to just 20 percent of current distribution (Wisdom *et al.* 2005: 206, citing Neilson *et al.* 2005). Research modeling the impacts of climate change under different land management scenarios in southeastern Oregon indicates that without active management, native sagebrush steppe could decline to approximately one-third its current extent (Creutzburg *et al.* 2015). Future climate models also predict that climatic changes in the Northern Great Basin will result in increased cheatgrass cover, particularly in susceptible areas (Boyte *et al.* 2016). In the face of climate change, sage-grouse habitats that are near areas currently dominated by this invasive species will require special management attention to prevent habitat loss to cheatgrass.

In addition to habitat impacts, temporal movements of sage-grouse are likely to be affected by climate change, negatively affecting the survival of juvenile individuals (Caudill *et al.* 2016). Juvenile sage-grouse experience increased mortality when they migrate to winter habitat too late, which is likely to occur more often as climate change delays the arrival of winter environmental conditions that trigger this migration (Caudill *et al.* 2016).

Recommendation: It is imperative that the Bureau undertake and update its climate analyses for this land use plan amendment process and provide additional and more specific management direction related to climate change. As President Biden announced in his first week in office, it is "essential that agencies capture the full costs of greenhouse gas emissions as accurately as possible, including by taking global damages into account" and calculating an "accurate social cost [of carbon] . . . to accurately determine the social benefits of reducing greenhouse gas emissions when conducting cost-benefit analyses of regulatory and other actions." Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*. 86 Fed. Reg. 7,037, 7,040 (Jan. 25, 2021); *see also* Secretarial Order 3399, *Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process* (Apr. 16, 2021), https://www.doi.gov/sites/doi.gov/files/elips/ documents/so-3399-508_0.pdf (describing consideration of greenhouse gas emissions and climate change impacts in NEPA analyses).[5]

[5] For example, Kauffman *et al*. (2022a) found that livestock grazing on BLM-managed public lands in the West—the most ubiquitous BLM-authorized activity occurring throughout the range of the greater sage-grouse—results in significant greenhouse gas ("GHG") emissions and other climate-related land degradation. Using a 2020 social cost of carbon (SCC) of $51 per tonne of CO_2, following the findings of the Interagency Working Group on Social Cost of Greenhouse Gases (2021), the authors calculated that the SCC for grazing on BLM and U.S. Forest Service-administered lands is greater than $500 million per year. Updating their work based on a new preferred mean SCC of $185 per tonne of CO_2, Kauffman *et al*.

3.2. Habitat Resistance and Resilience

ONDA recommended in our scoping comments that the Bureau of Land Management…

Improve sagebrush habitat resistance and resilience to drought.

The draft environmental impact statement and the preferred alternative…

Acknowledges that drought can affect sage-grouse population size and trend (BLM 2024 DEIS: 1-3) and has "caused changes to vegetation conditions, including lower sagebrush canopy cover, reduced perennial grass and forb production, and changes to food resource availability" in some western states, which may in turn "worsen the spread of invasive species" (BLM 2024 DEIS: 3-9). However, no alternative in the DEIS provides specific direction for how to address drought and its impacts on sage-grouse and sagebrush steppe. Despite its systematic impacts, the Bureau claims it is "better suited to make adjustments that respond to drought through activity- and implementation-level decision making at the allotment level" (BLM 2024 DEIS: 2-4, Table 2-1).

The best available science indicates that drought broadly affects sage-grouse population ecology.

Range-wide patterns of sage-grouse persistence indicate that extirpation of sage-grouse populations is related to the prevalence of droughts among other factors, with a 5.6 percent decrease in sage-grouse persistence per severe drought since 1950 (Aldridge *et al.* 2008). In southeastern Oregon, the interaction of vegetation and climate shapes the presence of sage-grouse, with summer drought conditions constraining the distribution of sage-grouse (Creutzburg *et al.* 2015). Additionally, research has shown that drought conditions result in reduced nest success (Holloran and Anderson 2005a), as well as decreased chick survival (Aldridge *et al.* 2008; Aldridge 2005; Drut *et al.* 1994b). This is due in part to the fact that drought forces sage-grouse to transition to a fall/winter diet of sagebrush earlier in the season, thus limiting their ability to fulfill their protein needs with a diet rich of forbs and insects before making that transition (Hagen 2011). Drought also can act as a multiplier for other disturbances such as excessive livestock grazing, increasing adverse effects on vegetation and soils (Creutzburg *et al.* 2015; Hagen 2011). This cumulative impact can result in limited plant regrowth, increased invasion by exotic grasses and overuse of wet meadows and riparian areas (Creutzburg *et al.* 2015).

(2023) now calculate the SCC for federally authorized cattle grazing on all public lands in the West is estimated to be $2.3 billion/year, based on a 20-year global warming potential ("GWP"), and $1.1 billion/year, based on a 100-yr GWP (citing Rennert *et al.* 2022). These calculated emissions and social costs do not include the additional ecosystem costs from grazing and associated livestock management activities that reduce biodiversity, carbon stocks, and rates of carbon sequestration. The authors demonstrate that adjustments to grazing levels on public lands could serve as an important and cost-effective adaptive approach to reduce greenhouse gas emissions, improve soil and water resources, and sustain native species biodiversity—including greater sage-grouse and sagebrush plant communities throughout the West—in the face of climate change.

Recommendation: The Bureau should use this planning process as an opportunity to provide additional and more specific management direction related to drought. Of particular importance is the incorporation of key aspects of the adaptive management approach outlined in Williams *et al.* (2009), where objective-driven management depends on effectively linking monitoring and assessment to a structured decision-making process. Further, given that decreased chick survival is associated with drought conditions, efforts to manage brood-rearing habitats will be essential to maintaining viable sage-grouse populations into the future. Both sage-grouse adults and chicks depend on riparian and wet meadows for high quality forage, and these areas are especially important when upland communities have desiccated (Hagen 2011). Management provisions should focus restoration efforts on riparian/mesic areas to help buffer chick survival rates from declining during drought years.

Finally, improving estimates in climate models of where and to what degree droughts are likely to contract sage-grouse habitat is imperative to helping identify priority areas for active management and habitat restoration (Creutzburg *et al.* 2015; Aldridge *et al.* 2008).

3.3. Habitat Connectivity

ONDA recommended in our scoping comments that the Bureau of Land Management…

Identify and conserve greater sage-grouse habitat connectivity.

The draft environmental impact statement and the preferred alternative…

States that the Bureau's "[h]abitat conservation and management should maintain existing connectivity between [sage-grouse] populations" (BLM 2024 DEIS: 2-10, Table 2-2) and provides the following general management direction:

> **Management Action SSS [X2]:** Design and implement projects that will maintain or improve habitat suitability, availability, and connectivity, based on site location, existing seasonal values, and habitat needs using the results of mid- and fine-scale habitat assessments and other complementary research, tools, or information and in coordination with partners across land management jurisdictions.

(BLM 2024 DEIS: 2-27, Table 2-6)

The Bureau also acknowledges that "[b]ecause habitat connectivity is important to maintaining gene flow and ensuring genetic diversity and distribution (Row et al. 2018), limiting fragmentation by adhering to disturbance caps would help maintain population connectivity" (BLM 2024 DEIS: 4-22), yet provides no specific direction for how each alternative would manage sage-grouse habitat to "maintain and improve" connectivity.

The best available science indicates that maintaining habitat connectivity and limiting fragmentation in sagebrush steppe is imperative for the long-term viability of sage-grouse and other sagebrush-associated species.

Protecting core regions and maintaining connectivity between sage-grouse populations may help stabilize or reverse the processes of range contraction and isolation that have resulted in long-term population declines (Knick and Hanser 2011). Maintaining connectivity by protecting habitat between separated sage-grouse populations is also a key strategy to mitigate against the impacts of climate change (McGuire *et al.* 2016; Crist *et al.* 2015; Hagen 2011). Connectivity also promotes genetic exchange and reduces complications that may arise from inbreeding (McGuire *et al.* 2016; Crist *et al.* 2015; Hagen 2011). Genetically diverse populations tend to be more adaptable to change, putting a premium on managing for genetic diversity through landscape connectivity (Jones 2015; Heller and Zavaleta 2009). Conversely, failure to protect habitat connectivity could contribute to the continued decline of sage-grouse (Knick *et al.* 2011; Knick and Hanser 2011; Johnson *et al.* 2011).

Recommendation: The Bureau should model and map connectivity habitat both within and between priority habitat areas in the current planning process and specially manage for connectivity as a climate change adaptation strategy. Focusing conservation efforts on core, highly connected priority areas and connecting corridors will help mitigate against climate change and improve the long-term sustainability of sage-grouse populations (Crist *et al.* 2015).

3.4. Climate Refugia

ONDA recommended in our scoping comments that the Bureau of Land Management…

Identify and specially manage climate refugia for greater sage-grouse and other fish and wildlife.

The draft environmental impact statement and the preferred alternative…

Do not analyze the benefits of establishing climate refugia for sage-grouse and other species.

The best available science indicates that a network of climate change reserves can support ecosystem and species persistence.

Conserving wildlife affected by climate change will require management that preserves and restores habitat resiliency and connectivity over the long-term. Climate change refugia—"areas relatively buffered from contemporary climate change"—represent important "havens" that "protect native species and ecosystems from the negative effects of climate change" (Morelli *et al.* 2020). Moreover, refugia offer "potential opportunities to retain biodiversity and ecosystem function in a rapidly changing environment" (Morelli *et al.* 2020). Rather than representing "static preserves where species are managed to resist change," Morelli *et al.* (2020) describes a network of climate change refugia as "stepping-stones for multiple species . . . to suitable habitats . . . designed to accommodate changing climates as environments transition to new states." This approach goes beyond the resistance strategy and encourages more adaptive, dynamic management to best conserve species and ecosystems.

Recommendation: The 2015 ARMPA identified Strategic Areas including Climate Change Consideration Areas on occupied and potential sage-grouse habitat in eastern Oregon to help prioritize certain management and serve as potential climate change refugia for grouse and other wildlife (Oregon 2015 FEIS: 2-47 - 2-28 and Table 2-7). *See* Map F ("2015 ARMPA Strategic Areas and ODFW and BLM-identified Priority Sage-Grouse Habitat"); *see also* Map G ("2015 ARMPA Strategic Areas and ODFW-identified Priority Sage-Grouse Habitat").[6] These areas, which are generally higher elevation with limited surface disturbance, were deemed most likely to provide the best available habitat to sage-grouse over the long-term based on climate change modeling (Oregon 2015 FEIS: 2-48). The Bureau even described "strategic areas are not meant to be permanently fixed to a given area and are expected to shift over time as the landscape changes and the habitat most important to the [sage-grouse] shifts" (Oregon 2015 FEIS: 2-48). The Bureau should retain and affirm the value of CCCAs and other strategic area designations in the current planning process as a component of its strategy to support sage-grouse and ecosystem adaptation to climate change, and provide supportive direction for their management and conservation.

4. Manage domestic livestock grazing to support greater sage-grouse conservation and ecosystem resilience

4.1. Grazing Management

ONDA recommended in our scoping comments that the Bureau of Land Management…

Manage livestock grazing to maintain habitat objectives in greater sage-grouse nesting and brood-rearing habitat.

The draft environmental impact statement and the preferred alternative…

Replaces the habitat objective tables from previous planning with "habitat indicators and benchmarks" to measure and adapt management to provide for sage-grouse habitat needs (BLM 2024 DEIS: App'x 8).[7] The DEIS applies these new indicators to management through a series of proposed objectives and management actions (BLM 2024 DEIS: 2-27, Table 2-6), though none are specific to livestock grazing. The new proposed habitat indicators table for Oregon

[6] The 2015 ARMPA also established Key Research Natural Areas to "provide baseline vegetation information to document successional changes" and "to document vegetational shifts in the plant communities in the future caused by changes in precipitation and temperature (climate change)" (BLM 2015 FEIS: 8-21). We discuss the Bureau's failure to fully maintain these crucial scientific research areas below, in section 4.5.

[7] Major concerns with the Bureau's replacing habitat objectives with habitat indicators, and their application to grazing management, are described in comments submitted by Advocates for the West, American Bird Conservancy, Center for Biological Diversity, Earthworks, Great Old Broads for Wilderness, Oregon Natural Desert Association, Prairie Hills Audubon Society, Public Employees for Environmental Responsibility, WildEarth Guardians, Western Shoshone Defense Project, Western Watersheds Project, and Western Wildlands Conservancy.

includes two that are key to assessing habitat quality and condition: perennial grass height and forb cover (BLM 2024 DEIS: 8-16, Table 8.1E).

The new Oregon indicators in the preferred alternative retain ≥7 inches on arid sites and ≥9 inches in mesic areas for perennial grass (and forb) height as a benchmark for sage-grouse lekking, pre-nesting and early brood-rearing habitat (BLM 2024 DEIS: 8-16, Table 8.1E).

The new indicators in the preferred alternative also propose ≥2 percent forb cover in arid sites and ≥5 to ≥6 percent forb cover in mesic habitats as benchmarks for sage-grouse lekking, pre-nesting and early brood-rearing habitat (BLM 2024 DEIS: 8-16, Table 8.1E). Perennial forb cover is combined with grass cover for brood-rearing, late brood-rearing and early autumn habitats (BLM 2024 DEIS: 8-17, Table 8.1E). For context, the 2015 ARMPA recommends 2–10 percent forb cover in "Warm-dry" and "Shallow-dry" arid sites in lekking, pre-nesting, nesting and early brood-rearing habitat; and 6–12 percent in "Cool-moist" and 5–15 percent in "Warm-moist" mesic sites (BLM 2015 ARMPA: 2-5, Table 2-2). The 2015 plan, like this DEIS, combined forb cover with grass cover in brood-rearing, late brood-rearing and early autumn habitats.

The best available science for sage-grouse conservation recommends managing for minimum grass height and a greater percentage of forb cover to support sage-grouse production.

Despite the Bureau's admonition in the DEIS that it is "inappropriate to use a single indicator" to assess sage-grouse habitat suitability (BLM 2024 DEIS: 8-1), grass height and forb cover are especially important for supporting successful sage-grouse nesting and chick survival. And even while retaining its measures for grass height from the 2015 ARMPA, the Bureau expresses doubt about their validity (BLM 2024 DEIS: 3-2, *citing* Smith *et al.* (2018)). As ONDA and others have previously commented, though Smith *et al.* (2018) reanalyzed previous studies and found a limited effect of grass height on nest success, the study admits that concealment is important for nest success and that the height of grasses may be more important in context of surrounding vegetation communities. Where the authors attempt to diminish the significance of the grass height parameter in nest success, they also acknowledge that vegetation structure might relate to other parameters of fitness such as insect abundance. Gibson *et al.* (2016) also affirmed that conditions that are present at the time of nest failure are, in fact, important to the concealment strategies of ground-nesting birds, and while taller vegetation may be an artifact of seasonality with successful nests, the inverse relationship of shorter vegetation and failed nests cannot be dismissed. Finally, as the Bureau acknowledges, and as supported by the preponderance of the scientific record, grass cover (which infers some minimum height) is important to concealing sage-grouse chicks (BLM 2024 DEIS: 3-3).

Forbs also have outsized importance as a component of sage-grouse habitat (Freese 2009; Rosentreter 2004; Barnett and Crawford 1994), serving as a key food source for the species. High-protein invertebrates associated with forbs are also critical to sage-grouse chick survival (Dumroese *et al.* 2015). Given the importance of forbs and invertebrates to both hens and chicks, it's unsurprising that habitat use during brood-rearing is typically where forb and arthropod abundance are greater (Smith *et al.* 2019). Adult female survival, breeding, and brood-rearing

success are key to population viability of sage-grouse, making the protection and restoration of breeding and brood-rearing habitats an imperative part of conservation efforts (Taylor *et al.* 2012; Johnson and Braun 1999). Management that promotes increased forb cover could play an imperative role in halting and reversing population declines (Dumroese 2016; Dumroese *et al.* 2015; Gregg and Crawford 2009; Yost et al. 2008; Gregg 2006; Thompson *et al.* 2006; Woodward 2006; Connelly *et al.* 2004; Hausleitner 2003; Drut *et al.* 1994a; Casazza 2001; Coggins 1998; DeLong *et al.* 1995).

Sage-grouse chicks rely heavily on insects—consuming invertebrates from 41 families of insects (Innes 2016; Drut *et al.* 1994b)—which are the primary food source in their first week of life (Innes 2016; Call and Maser 1985; Klebenow and Gray 1968, Peterson 1969, Pyle 1993, Drut *et al.* 1994b). Insects are such a vital part of the early chick diet that in a study using captive chicks, all chicks not given insects during the first 10 days post-hatch died, whereas all chicks given insects during this time period survived (Johnson and Boyce 1991). Management that increases forb cover would benefit pre-gravid hens and chicks by supporting insects that are a high protein food source used by the species (Hagen 2011; Thompson *et al.* 2006).

Beginning approximately the third week following hatch, sage-grouse chicks begin to transition from insect consumption to use of forbs (Innes 2016). Chicks have been documented to consume 34 genera of forbs (Innes 2016; Drut *et al.* 1994b). The combination of insects in the first weeks of life followed by consumption of forbs supports rapid maturity in sage-grouse chicks (Rosentreter 2016; Blomberg *et al.* 2013).

Forbs are particularly important to pregravid hens due to their high concentrations of calcium, phosphorus and protein, which supports egg production (Innes 2016; Hagen 2011; Gregg *et al.* 2006), composing 18-50 percent of their diet by weight (Blomberg *et al.* 2013; Barnett and Crawford 1994). Forbs are a vital part of the pregravid diet due to their high concentrations of calcium, phosphorus and protein, which supports egg production (Innes 2016; Hagen 2011; Gregg *et al.* 2006). Sage-grouse hens that have access to better food resources have superior body conditions, resulting in much higher brood success rates than hens in poor condition (Blomberg *et al.* 2013).

Brood-rearing females select for areas that have significantly more forb and grass cover than surrounding areas (Street 2020; Smith *et al.* 2019; Gibson *et al.* 2016; Casazza *et al.* 2011; Hagen *et al.* 2007; Dobkin 1995; Drut *et al.* 1994a; Klebenow and Gray 1968). Early brood-rearing habitat selection is particularly important because recently-hatched chicks are limited in their mobility, and brood success decreases when hens move their broods long distances during this life stage (Street 2020; Gibson *et al.* 2016).

Not only do forbs constitute an important part of the sage-grouse diet, but they provide protective cover as well (Hagen 2011). Brood-rearing females will select for both horizontal and vertical properties found in forb communities, seeking taller forbs and proportionally greater forb cover (Street 2020; Gibson *et al.* 2016; Klott and Lindzey 1990). Forb, sagebrush and grass cover, as well as plant species richness in brood-rearing habitats, are positively associated with chick survival (Holloran *et al.* 2005; Hausleitner 2003).

A major factor contributing to sage-grouse population declines has been decreased annual recruitment due to poor brood-rearing habitats (Smith *et al.* 2019; Wirth and Pyke 2013; Atamian *et al.* 2010). On some landscapes, historic and current livestock grazing has led to forb depletion, where seed production is reduced by grazing, ultimately scuttling the seedbank over time (Street 2020; Gioria and Pysek 2016; Rosentreter 2004). Sage-grouse conservation efforts would be best directed at protecting and restoring breeding and brood-rearing habitats, with a particular focus on enhancing the availability of forb and insect foods (Aldridge and Boyce 2006). Management efforts that promote a productive understory of forbs and native grasses within sagebrush stands should help ensure high-quality early brood-rearing habitat, increasing fitness of hens and improving chick survival, which will slow or even reverse current declining population trends (Hagen 2011; Huwer *et al.* 2008; Arkle *et al.* 2014; Huwer 2004).

Two studies that compared sage-grouse hens with broods at Hart Mountain and Jackass Creek in Oregon found that sage-grouse at Hart Mountain were more abundant and showed higher productivity than at Jackass Creek (Drut *et al.* 1994a; Drut *et al.* 1994b). At Hart Mountain, broods inhabited lakebeds and meadows where they primarily consumed forbs and insects, whereas at Jackass Creek, broods primarily ate sagebrush (Drut *et al.* 1994a). Forb cover was estimated to be 10-14 percent for early brood-rearing habitat and 19-27 percent for late-brooding locations at Hart Mountain (Drut *et al.* 1994b). Meanwhile, Hagen (2011) noted that overall brood rearing habitat across Oregon typically has >15 percent forb cover. Drut *et al.* (1994b) suggested that overall minimum forb cover for brood rearing habitat in Oregon should be 12-14 percent.

Recommendation: As proposed in the preferred alternative, the Bureau should retain grass height as a key measure of suitable sage-grouse nesting and brood-rearing habitat. Even where management generally produces sufficient grass height, these scientifically prescribed minimums are a valuable reminder to managers, public land users and other stakeholders of both the need and opportunity to support healthy sagebrush habitats.

The Bureau should also increase its minimum indicator for forb cover, which includes "preferred forbs," in sage-grouse nesting and brood-rearing habitat. The agency's current percentages do not align with the preponderance of the science, including research developed on sage-grouse ecology in Oregon. Increasing the minimum for forb cover will help managers, public land users and other stakeholders understand where sage-grouse habitat might be depauperate of this critical habitat component.

4.2. Grazing Utilization

ONDA recommended in our scoping comments that the Bureau of Land Management…

Limit annual livestock grazing use to 25–30 percent of forage utilization in greater sage-grouse priority habitat.

The draft environmental impact statement…

Declared that alternatives that "specify acceptable livestock grazing utilization" are outside the scope of the sage-grouse plan amendment (BLM 2024 DEIS: 2-4, Table 2-1).

The best available science for sage-grouse conservation recommends a lower utilization rate that is more likely to support habitat objectives for vegetation height, cover and diversity in sage-grouse seasonal habitats.

Range scientists have determined that stocking rate (rather than grazing system) is the primary factor affecting rangeland production (Briske *et al.* 2008; Holechek *et al.* 1998; Van Poolen and Lacey 1979). Reducing livestock utilization is recommended to support rangeland restoration (Van Poolen and Lacey 1979, defining light utilization as 20–40 percent utilization of annual forage production by weight; Holechek *et al.* 1999, defining light-moderate utilization as 30–35 percent utilization). Holechek *et al.* (2010: 290), citing Gregg *et al.* (1994) and Sveum *et al.* (1998), noted that grazing must be kept at conservative levels (25 to 35 percent use) "for high nesting success by sage-grouse." Braun (2006, unpublished) similarly recommended limiting grazing use to 25–30 percent utilization.

While definitions of "light" grazing use vary, numerous references have settled on a general 25 percent harvest coefficient for allocating forage for livestock (Holechek *et al.* 2010: 157, citing Troxel and White 1989; Galt *et al.* 2000; Lacey *et al.* 1994; White and McGinty 1997; NRCS 1997). Although this rate is more conservative than others prescribed for light grazing, it allows both forage species and livestock to maximize their productivity, allows for error in forage production estimates, accounts for the potential effects of drought, and supports multiple use values (Holechek *et al.* 2010). Holechek *et al.* (2010: 157) also noted that, because most ranchers have difficulty monitoring and measuring annual grazing utilization (and BLM often does not regularly monitor and collect utilization information), use of grazing coefficients higher than 25 percent "invariably leads to land degradation . . . when drought occurs because of rancher reluctance [to reduce livestock numbers]." Limiting livestock grazing to 25 percent utilization would also support other sage-grouse habitat objectives, such as maintaining a minimum stubble height (*see* Holechek *et al.* 2010: 164; Manier *et al.* 2013: 97). A case study of the Antelope Springs Allotment in southern Idaho demonstrates that ranching operations can be successful and improve sage-grouse habitat using a 20 percent utilization standard (Stuebner, Times-News, 12/29/13).

Recommendation: The Bureau errs in concluding that prescribing a maximum utilization rate is beyond the scope of this DEIS. The six analyzed alternatives are almost entirely built upon minimum and maximum habitat indicators, allowed disturbance types, disturbance caps, disturbance densities, management triggers, minimum mitigation requirements – and many, many other such measures. The forage utilization standard recommended here is another measure, based on science and intended to support sage-grouse ecology and preserve habitat diversity, resiliency and connectivity in the face of climate change and other stressors.

4.3. Annual Grass Management

ONDA recommended in our scoping comments that the Bureau of Land Management…

Manage grazing to limit annual grass to five percent of vegetative cover within 4 miles of active/pending greater sage-grouse leks.

The draft environmental impact statement and the preferred alternative…

Makes no change to the current management objective from the 2015 ARMPA:

> Objective VEG 3: Reduce the area dominated by invasive annual grasses to no more than 5 percent within 4.0 miles of all occupied or pending leks. Manage vegetation to retain resistance to invasion where invasive annual grasses dominate less than 5 percent of the area within 4.0 miles of such leks (BLM 2024 DEIS: 2-OR-10).

The proposed new habitat indicators table for Oregon reduces that percentage to <2 percent cover in lekking, pre-nesting, nesting and early brood-rearing habitat, and late-brood-rearing, summering and early autumn habitats (BLM 2024 DEIS: 8-16 – 8-17, Table 8.1E).

The best available science and BLM's own analyses thoroughly describe annual grasses as an existential threat to sage-grouse and sagebrush habitat.

The 2015 ARMPA identified the spread of invasive annual grasses as a "major threat" to sage-grouse or their habitat on Bureau lands in Oregon (Oregon 2015 ARMPA: 1-7), and for all populations identified in Oregon in the U.S. Fish and Wildlife Service's Conservation Objectives Team report (Oregon 2015 ARMPA: 1-9, Table 1-5). The DEIS affirmed that "[i]nvasive annual grasses, such as cheatgrass, medusahead, and ventenata species, are a recognized threat to sagebrush ecosystems causing reduced ecosystem function, displacement of native vegetation, increased fire risk and reduced rates of post-fire recovery all of which can lead to degradation and/or loss of sage-grouse habitat (BLM 2024 DEIS: 8-24, internal citations omitted).

Importantly, the Bureau includes a robust analysis and justification for including invasive annual grass cover as a habitat suitability indicator for sage-grouse (BLM 2024 DEIS: 8-24 – 8-28). The analysis concluded that the habitat benchmark for *suitable* sage-grouse habitat is <2 percent, while *marginal* habitat is 2-5 percent (BLM 2024 DEIS: 8-26).

Recommendation: Objective VEG 3 seeks to reduce invasive annual grasses to no more than 5 percent within 4 miles of occupied/pending leks, even though the Bureau would call that habitat *marginal* (BLM 2024 DEIS: 8-26). The agency should reconcile this measure with its habitat indicators table for Oregon, which supports managing for less than 2 percent of invasive grass cover in nesting, early brood-rearing and late brood-rearing habitat (*i.e.*, within 4 miles of sage-grouse leks).

Given the immense threat invasive annual grasses pose to sage-grouse and sagebrush steppe, the Bureau should also prescribe a general program for preventing and reducing annual grass occurrence. Reisner *et al*. (2013: 1) provided clear, science-based prescriptions for building resistance in sagebrush habitats against cheatgrass:

"If the goal is to conserve and restore resistance of [big sagebrush] systems, managers should consider maintaining or restoring:

(i) high bunchgrass cover and structure characterized by spatially dispersed bunchgrasses and small gaps between them;

(ii) a diverse assemblage of bunchgrass species to maximize competitive interactions with *B. tectorum* in time and space; and

(iii) biological soil crusts to limit *B. tectorum* establishment."

The Bureau should also adopt programmatic prescriptions to avoid exacerbating the spread of invasive species into sage-grouse habitats. For example, where grazing management is contributing to the spread of cheatgrass, medusahead and ventenata, the agency should require grazing permittees/lessees to deploy herd management techniques (*e.g.*, herding, mineral placement, water placement) or temporarily close pastures to keep livestock at least 4 miles away from leks until the 5 percent invasive annual grasses threshold is achieved. And while the Bureau has stated in the DEIS that this type of site-specific management decisions is outside the scope of this planning process, the preferred alternative, in fact, properly prescribes a slate of range management actions of the level and specificity described here (*see* BLM 2024 DEIS: 2-104 – 2-112, Table 2-12).[8]

4.4. Rangeland Infrastructure

ONDA recommended in our scoping comments that the Bureau of Land Management…

Inventory and assess need for current range infrastructure by BLM district, and require no net additional range infrastructure in sage-grouse priority habitat.

The draft environmental impact statement….

Does not require no net additional range infrastructure in sage-grouse priority habitat.

[8] An agency's discretion to determine the purpose and need—that is, the scope and depth—of a plan is not unfettered. Courts will scrutinize and reject a formulation of a project's purpose and need that overly restricts the consideration of reasonable alternatives, such as the management prescriptions proposed here. In *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, for example, an agency's proposed interpretation of its purpose and need was too narrow to satisfy NEPA because it restricted the scope of reasonable alternatives too tightly, down to one or two choices. 177 F.3d 800, 814 n.7 (9th Cir. 1999). Similarly, in *City of Carmel-by-the-Sea v. U.S. Dep't of Transportation*, the court noted, "The stated goal of a project necessarily dictates the range of reasonable alternatives and an agency cannot define its objectives in unreasonably narrow terms." 123 F.3d 1142, 1155 (9th Cir. 1997). Here, the Bureau describes that the purpose and need of the ARMPA is "to address a sub-set of the [sage-grouse] goals, objectives, allocations and management actions that need updates to [respond] to changing land uses, improve efficiency and effectiveness of [sage-grouse] habitat management, provide for consistent conservation across state lines, and *provide the BLM with locally relevant decisions that accord with range-wide [sage-grouse] conservation goals*" (BLM 2024 DEIS: 1-4). "Livestock grazing" is identified as one of the management actions "the BLM is focusing on." *Id*.

The preferred alternative…

Retains management actions whereby the Bureau would evaluate existing range improvements during reauthorization of livestock grazing privileges and *consider* removal or modification of projects that negatively affect sage-grouse or their habitat (BLM 2024 DEIS: 2-109, Table 2-12, Management Action RM-4). The preferred alternative also commits the agency to design and implement new range improvements to reduce grazing impacts on sage-grouse habitat; and focus authorization of new projects in PHMA where they would have nominal, incidental or beneficial effects on sage-grouse habitats (BLM 2024 DEIS: 2-110, Table 2-12, Management Action RM-5). A third management action would have the Bureau identify high-risk fences and evaluate whether they are both needed and meet BLM fencing standards. If determined unnecessary, the Bureau is instructed to remove the fence; if a fence is needed, it would be marked or modified to make it safer for sage-grouse. New fencing would only be allowed in high-risk areas under certain conditions (BLM 2024 DEIS: 2-111, Table 2-12, Management Action RM-6).

The best available science advises reducing range infrastructure to conserve sage-grouse.

Range developments that support livestock grazing can have significant impacts on sage-grouse and their habitats (*see* COT 2013: 46, 52; Oregon 2013 DEIS: 2-10). Range developments include structures such as cattle guards, fences, exclosures, corrals or other livestock management facilities; pipelines, troughs, storage tanks (including moveable tanks used in livestock water hauling), windmills, ponds/reservoirs, solar panels and spring developments (Oregon 2013 DEIS: 2-85).

Two of the more prominent range developments identified as a threat to sage-grouse are fences and water developments (COT 2013: 52, App. A; Oregon 2013 DEIS: 2-10). While exact data are not available, it has been estimated that there are nearly 10,000 miles of fence crisscrossing Bureau-managed sage-grouse habitat in Oregon alone (Manier *et al.* 2013; Oregon 2013 DEIS: 3-80)—enough fence to extend the length of the United States, from California to Maine, more than three times. The number of water developments on Bureau-managed lands in Oregon is unknown (Oregon 2013 DEIS), though it is estimated there are more than 56,500 water developments across all Bureau-managed sage-grouse habitat in the West (Manier *et al.* 2013; Connelly *et al.* 2004). The primary function of these range developments is to support livestock grazing (*see* Oregon 2013 DEIS: 3-78, describing current grazing authorizations for 927,660 Animal Unit Months (AUMs) on 749 allotments in sage-grouse range in Oregon).

In addition to degrading habitat and causing direct mortality of sage-grouse, range developments subsidize generalist predators that have the potential to impact sage-grouse populations (O'Neil *et al.* 2018), in some cases very significantly. O'Neil *et al.* (2018: 2) concluded that "[i]n semiarid ecosystems of the western U.S., predator-prey communities are undergoing transformation partly in response to the increased availability of anthropogenic food and water subsidies in regions where these resources were historically limited."

Recommendation: The management actions included in the preferred alternative are useful direction for limiting impacts from existing and new range infrastructure on sage-grouse and their habitat, but do not seek to reduce or even require no net additional infrastructure in sage-grouse priority habitat. Only minor modifications to the current prescriptions in the preferred alternative would be necessary to finally balance future range improvements with sage-grouse conservation on the last, best remaining habitat in Oregon.

4.5 Key Research Natural Areas Management

ONDA recommended in our scoping comments that the Bureau of Land Management maintain Key Research Natural Areas ("RNA") that, in the 2015 ARMPA, were made unavailable to livestock grazing in order to serve as ungrazed baseline reference areas supporting science-based management of sagebrush plant communities critical to the survival and recovery of sage-grouse in Oregon.

A. Ungrazed Research Natural Areas are an Essential Component of Science-Based Sage-Grouse Management.

Oregon's sage-grouse population had fallen to fewer than 20,000 birds by 2015, when the ARMPA was adopted, and were determined by ODFW to have further decreased to 15,409, by 2023 (Vold 2023). An indispensable part of the Bureau's response to help reverse the sage-grouse's decline in Oregon is new scientific research to be conducted in 15 specially identified "key" Research Natural Areas ("RNA") which the 2015 ARMPA closed to livestock grazing. 2015 Oregon Approved Resource Management Plan Amendment (hereafter "2015 Oregon ARMPA") at 2-18. The Bureau determined these areas to be critical for sage-grouse conservation both because of their high habitat value for the bird and their high scientific and management value as reference areas to gauge the plan's effectiveness. 2015 Oregon Greater Sage-Grouse Proposed RMPA/Final EIS (hereafter "Oregon 2015 FEIS") at 2-44 to -45.

RNAs are a "special type of ACEC" whose "primary purpose" is "research and education" and are "designated . . . to protect special intact representative native plant communities." 43 C.F.R. § 8223.0-5(a); 2015 Oregon ARMPA at 5-11. Through the recently approved Public Lands Rule, the Bureau has now codified RNAs "as a type of ACEC designated for the primary purpose of research and education on public lands, consistent with existing regulations (43 CFR subpart 8223) and policy." Conservation and Landscape Health, 89 Fed. Reg. 40,313 (May 9, 2024) (to be codified at 43 C.F.R. § 1610.7–2(e)); *see also id.* at 40,326 ("These regulations allow the BLM to establish RNAs for the primary purpose of research and education on public lands having natural characteristics that are unusual or that are of scientific or other special interest.").

The Bureau needs ungrazed reference areas to compare to grazed areas, evaluate how curtailing livestock grazing might benefit sage-grouse, and adjust future management of the vast areas in Oregon (and beyond) where it allows grazing. Ungrazed Key RNAs provide essential information because, as the Bureau has explained, "the lack of large representative tracks of ungrazed habitat makes it nearly impossible to determine and monitor the actual consequences of livestock grazing." 2018 Oregon Greater Sage-Grouse Proposed RMPA/Final EIS (hereafter

"Oregon 2018 FEIS") at 4-7. These reference sites will allow the agency to understand how to better manage the 12,083,622 acres of public land that remain available for grazing in sage-grouse habitat in eastern Oregon. Oregon 2015 FEIS at 2-18. In 2018, the Bureau emphasized that the areas made unavailable to grazing by the 2015 ARMPA were "the minimum number of sites and areas necessary to provide sufficient replication and support a coherent research plan" that will generate data with the needed "statistical power" and "sufficient scope of inference" to make meaningful land management decisions. Oregon 2018 FEIS at 2-4, 4-7, 4-8. And the 15 Key RNAs are not only the "minimum number" to provide meaningful information for eastern Oregon, but also "potentially [for] western Idaho and northern Nevada." *Id*. at 4-8.

The linchpin of the sage-grouse ARMPA that is part of all current Bureau land use plans in eastern Oregon is scientifically informed adaptive management. *See* 2015 Oregon ARMPA at J-1 ("Careful monitoring of these outcomes [from management actions] both advances scientific understanding and helps with adjusting resource management directions."); *see also* USFWS (2013) (Conservation Objectives Team of expert sage-grouse scientists recommending prioritizing "key research projects that will address uncertainties associated with sage-grouse and sagebrush habitat management" because "[e]ffective amelioration of threats can only be accomplished if the mechanisms by which those threats are imposed on the redundancy, representation, and resilience of the species and its habitats are understood"). Indeed, one federal district court has explained:

> In discussing the need for scientific management of grazed lands to promote the survival of sage-grouse, the Court found that the unique scientific research to be conducted in the ungrazed portions of the Key RNAs is a "significant public good . . . weighed against the miniscule area [that the 2015 ARMPA makes] unavailable to grazing."

Or. Nat. Desert Ass'n v. Bushue ("*Bushue II*"), 672 F. Supp. 3d 1101, 1103 n.1 (D. Or. 2023) (quoting *Or. Nat. Desert Ass'n v. Bushue* ("*Bushue I*"), 644 F. Supp. 3d 813, 842 (D. Or. 2022)).

When it identified and designated the fifteen Key RNAs in 2015, the Bureau described that removal of grazing from these areas will "[1] provide baseline vegetation information to document successional changes, [2] serve as areas for comparison to [grazed] areas, and . . . [3] document vegetational shifts in the plant communities in the future caused by changes in precipitation and temperature (climate change)." Oregon 2015 FEIS at 8-21. Each Key RNA was carefully selected because they were situated within Oregon Priority Areas for Conservation ("PAC"). *See* Oregon 2018 FEIS at 1-5. These PACs are "*the most important areas* needed for maintaining [sage-grouse] representation, redundancy, and resilience across the landscape." 2015 Oregon ARMPA at 5-18 (emphasis added); *see also* Oregon 2015 FEIS at 2-44 ("Key RNAs [] include those with very high proportion of PHMA, are in PACs, either contain leks, are utilized by [sage-grouse] and have leks nearby (0.1 - 4 miles), and are comprised of an array of plant communities important to [sage-grouse]."). Removing grazing disturbance from the RNAs and conducting scientific research is an irreplaceable prerequisite to understanding how "natural successional processes would proceed" in plant communities understood to be essential for sage-grouse recovery. Oregon 2015 FEIS at 2-46.

The Bureau dragged its feet on implementing the 2015 closures. Only recently, under court order, has the agency begun to comply with the 2015 RMPA direction. *See Bushue I*, 644 F. Supp. 3d at 844 (holding that BLM had unlawfully withheld implementation of the closures and ordering that "BLM must make unavailable to grazing the portions of the key RNAs specified in the 2015 ARMPA without further delay"); *Bushue II*, 672 F. Supp. 3d at 1107 (adopting stipulated remedy in which BLM agreed to "a detailed plan for immediate, intermediate, and permanent actions to carry out the key RNA closures").

Now, however, under alternatives 5 and 6, the Bureau would reverse course, and proposes "eliminating or modifying" ungrazed scientific research areas in all but one (East Fork Trout Creek) of the Key RNAs "to avoid resource conflicts." DEIS at 2-177.[9] Neither of these conclusory statements provides a rational basis that would support abandoning important scientific research areas. The Bureau does not provide a cogent explanation for why making livestock grazing available within key RNAs is appropriate—that is, scientifically justified—in 2024 when it was not in 2015. *See also Bushue I*, 644 F. Supp. 3d at 842 ("In discussing the need for scientific management of grazed lands to promote the survival of sage-grouse, the Court found that the unique scientific research to be conducted in the ungrazed portions of the key RNAs [in Oregon] is a significant public good") (internal quotation marks omitted). Put differently, the Bureau offers no rational explanation as to why *less* baseline information and *less* scientific research is appropriate—particularly given the fact that Oregon's sage-grouse population continues to decline and has plummeted by more than 20 percent just since the agency adopted (but has still failed to fully implement) the 2015 plan. Instead, the Bureau merely states that conflicts include "constructing fences in proximity . . . within 1.2 miles of an occupied or pending lek (a conformance violation of the 2015 ARMPA) or within existing designated Wilderness Study Areas." DEIS at 2-177. Neither of these conclusory statements provides a rational basis that would support abandoning important scientific research areas.

Having a robust network of RNAs free of disturbance from livestock grazing is the only way that the Bureau can begin to understand the impact of livestock grazing on greater sage-grouse and the spectrum of unique sagebrush plant communities identified in the 2015 ARMPA, including in the context of broader environmental change and, in doing so, meet its obligations to conserve greater sage-grouse in Oregon and across the range. *See, e.g.*, Oregon 2015 FEIS at 3-134 (the closed RNAs are "part of a national network of reserved areas" created for "nonmanipulative research and baseline data gathering on relatively unaltered plant community types"). As was true in 2015, the Bureau still lacks representative ungrazed reference areas necessary to better understand how to manage the single most ubiquitous BLM-authorized land use (livestock grazing) occurring on more than 12 million acres of essential sage-grouse habitat in Oregon. There is no indication in the DEIS that the Bureau has established or identified new ungrazed reference areas since 2015.

B. Because Fencing Off the Key RNA Scientific Research Areas Provides a *Conservation Benefit* to Sage-Grouse, Such Fences Meet the Lek Buffer Requirements and Required Design Features Established in the 2015 ARMPA—None of Which Are Proposed to be Amended in the 2024 DEIS.

[9] Two of the Key RNAs, Foster Flat and Guano Creek-Sink Lakes, were already closed to grazing prior to the 2015 ARMPA.

The Bureau misreads the 2015 ARMPA with regard to whether and under what circumstances fencing is allowed in sage-grouse habitat, including in proximity to leks. The 2015 ARMPA explicitly requires the Bureau to undertake a "conservation benefit" analysis and make a determination as to whether the fencing explicitly contemplated in that plan justifies a departure from the plan's default lek buffer distances. Most importantly, the Bureau already decided, in the 2015 ARMPA, that "range improvements *which provide a* ***conservation benefit*** to [sage-grouse] ***such as fences*** for protecting important seasonal habitats, ***meet the lek buffer requirement***." 2015 ARMPA, App'x B at B-2 (emphases and boldface added); *see also* 43 U.S.C. § 1732(a) (requiring that BLM "shall manage" the lands "in accordance with" land use plans); 43 C.F.R. § 4100.0-8 (1995) ("Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan"). Like many of the RNA-specific environmental assessments ("EA") the Bureau prepared last year, the DEIS again relies on a false premise.

It is true that the 2015 ARMPA requires the Bureau to apply various buffers and seasonal restrictions listed in Table 2-3, for management actions in priority and general sage-grouse habitat areas. 2015 Oregon ARMPA at 2-7 (MD SSS-9). In so doing, "the BLM *will apply* the lek buffer-distances identified in . . . Appendix B." *Id*. (emphasis added). Both Table 2-3 and Appendix B provide for a 1.2-mile buffer for fences and other low rangeland structures. 2015 ARMPA at 2-8 and App'x B at B-1.

However, the Bureau overlooks that the 2015 ARMPA unambiguously requires the agency to "apply the lek buffer-distances specified as the lower end of the interpreted range in the report *unless justifiable departures are determined to be appropriate*." 2015 ARMPA, App'x B at B-1 (emphasis added). The ARMPA therefore contemplates that the Bureau may not simply apply the lek buffers automatically. Instead, the agency must first consider, and make a determination, whether there are justifiable departures from those buffer distances—just as Appendix C requires the agency to determine whether a variation in Required Design Features is justified by another "plan-level protection" that "provides equal or better protection for [sage-grouse] or their habitat." 2015 ARMPA, App'x C at C-1. "Justifiable departures to decrease or increase from these distances, based on local data, best available science, landscape features, and other existing protections (e.g., land use allocations, state regulations) *may be appropriate* for determining activity impacts." 2015 ARMPA, App'x B at B-1 (emphasis added).

Importantly, the Bureau does not identify *any* of the "goals, objectives, appendices, and management decisions/actions" in the 2015 ARMPA as having any "potential to change as a result of the current planning effort." *See* DEIS at 2-OR-1 to -54 (section 2.13 identifying all potential changes to Oregon RMPs). The Bureau's revision of its (previously amended) land use plan must therefore be "in accordance with" these provisions of the 2015 ARMPA. 43 U.S.C. § 1732(a).

Notably—and relevant to the question of whether another "plan-level protection" would "provide equal or better protection for [sage-grouse] or its habitat"—the Bureau determined, in the 2015 ARMPA, that "range improvements which provide a *conservation benefit* to" sage-grouse include "fences for protecting important seasonal habitats"—and explicitly concludes that

such fences "meet the lek buffer requirement." 2015 ARMPA, App'x B at B-2 (emphases added). In other words, the Bureau has already determined that fences that provide a conservation benefit—like those required to physically close off ungrazed scientific research sites identified in Key RNAs—are consistent with the lek buffer requirement, even if fencing is closer to a lek than the default buffer distance.

This makes sense because the baseline research to be conducted in Key RNAs is a vital part of the Bureau's self-described "paradigm shift" in which the "[a]dequacy of management adjustments will be measured by science-based effectiveness monitoring of the biological response of sagebrush landscapes and populations." 2015 ROD at 1-40. As the Bureau explained, this "conservation strategy relies heavily on monitoring and evaluation to assess the success and effectiveness of implementing the management decisions in the ARMPAs." *Id*. at 1-38; *see also* USFWS (2013) (U.S. Fish and Wildlife Service's Conservation Objectives Team of expert sage-grouse scientists recommending prioritizing "key research projects that will address uncertainties associated with sage-grouse and sagebrush habitat management" because "[e]ffective amelioration of threats can only be accomplished if the mechanisms by which those threats are imposed on the redundancy, representation, and resilience of the species and its habitats are understood"). *See also* Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*. 86 Fed. Reg. 7,037, 7,037 (Jan. 25, 2021) (in which the President describes our Nation's commitment to promoting and protecting public health and the environment and announces a policy of *listening to the science*).

C. Eliminating or Reducing Ungrazed Scientific Research Areas Established in the 2015 ARMPA Would Be Inconsistent with the Bureau's ACEC Regulations.

The Bureau fails in the DEIS to explain how eliminating or reducing "key" scientific research necessary to conservation of the greater sage-grouse, would be consistent with the purpose of the Key RNAs as established by the 2015 ARMPA. Bureau regulations provide that "[a] designated ACEC research natural area will be subject to the use restrictions at § 8223.1 of this title in addition to the special management attention prescribed by the authorized officer through land use planning." 43 C.F.R. § 1610.7-2(e)(2) ("A) (in effect, not yet formally codified in C.F.R.). In turn, "[n]o person shall use, occupy, construct, or maintain facilities in a manner *inconsistent with the purpose* of the research natural area." *Id*. § 8223.1(b) (emphasis added).

The *purpose* of the Key RNAs designated in 2015 is to "provide baseline vegetation information to document successional changes, serve as areas for comparison to treated [grazed] areas, and to document vegetational shifts in the plant communities in the future caused by changes in precipitation and temperature (climate change)." Oregon 2015 FEIS at 8-21. The ARMPA directs the Bureau to manage the entire areas of the Key RNAs made unavailable for grazing "as undisturbed baseline reference areas for the sagebrush plant communities they represent that are important for Greater Sage-grouse." 2015 Oregon ARMPA at 2-33 (Objective SD 4) (underlining added).

These Key RNAs (or portions thereof) are areas that, in the 2015 ROD, were made "unavailable for grazing" in order to "provide areas where natural successional processes would proceed for long-term monitoring of the plant communities important for [sage-grouse] and

research." Oregon 2015 FEIS at 2-46. In other words, the purpose of the Key RNA closures is to provide (1) permanently ungrazed, statistically significant, scientific baseline research areas and (2) small, but important, parcels of undisturbed habitat for imperiled sage-grouse populations. 2015 Oregon ARMPA at 2-33 (Objectives SD 1, SD2 and SD 4); *see also* 2015 Oregon ARMPA at 1-7 (describing overarching purpose "to identify and incorporate appropriate measures . . . to conserve, enhance, and restore [sage-grouse] habitat"); *see also* Oregon 2015 FEIS at V-31 ("These areas [Key RNAs] would be used for research-related activities such as studying sagebrush communities important for [sage-grouse] and, in the *absence of BLM-permitted activities*, would serve as comparative baseline areas.") (emphasis added).

The entire acreage of these areas are currently *not allocated* for livestock grazing based on their designation as "unavailable" in the 2015 ARMPA and ROD. To now allocation them for livestock grazing, the Bureau must make a determination that such new allocation would be *consistent with the purpose* of the RNA. 43 C.F.R. § 8223.1(b). Adding grazing to an area set aside as an ungrazed study site is anathema to the land use plan purpose of these sites.

Moreover, the Bureau, "through the land use planning process, *may remove the designation* of an ACEC, in whole or in part, *only* when" the State Director finds either "that *special management attention is not needed* because another legally enforceable mechanism provides an *equal or greater level of protection*" or "that the *relevant and important values* are no longer present, cannot be recovered, or have recovered to the point where special management is no longer necessary." To do so, "[t]he findings must be supported by data or documented changes on the ground." 43 C.F.R. § 1610.7-2(k) (emphases added). Neither of these things are true in the Key RNAs, and the DEIS provides no indication that the Bureau even considered whether they might be true; it certainly does not provide any findings or analyses, as required under the Bureau's regulations.

In short, the 2015 ARMPA, through MD SSS-9, requires the Bureau to "apply" the detailed lek buffer distances tool set out in Appendix B—which includes evaluation of whether any "justifiable departures" are appropriate. That lek buffer distances tool directs the Bureau to not build fences within 1.2 miles of leks *unless* they will "provide a conservation benefit." And the Bureau has already deemed that fences that provide a conservation benefit—like the those that represent the only method that can guarantee the undisturbed research conditions required under the 2015 ARMPA—meet the lek buffer requirement. 2015 ARMPA, App'x B at B-2. But the DEIS includes no evaluation or determination that reducing the acreage previously made unavailable for grazing in the 2015 ARMPA is consistent with the purpose of the 2015 closures that is part of the current land use plan. 43 C.F.R. § 8223.1(b). NEPA and FLPMA require the Bureau to study, disclose to the public, and determine alternatives that are *consistent* with the purpose of the currently closed Key RNAs. 2015 ARMPA, App'x B at B-2; 43 U.S.C. § 1732(a); *Or. Nat. Desert Ass'n v. Bureau of Land Mgmt.*, 625 F.3d 1092, 1121 n.24, 1122 (9th Cir. 2010) (discussing NEPA's principle of "democratic decisionmaking" and how NEPA is designed to bring "fairly debatable issues" like these "out in the open" for analysis and discussion).

D. Fencing Off Ungrazed Scientific Research Areas Established in the 2015 ARMPA Would Not Impermissibly Impair Wilderness Values.

Some of the Key RNAs overlap with Wilderness Study Areas ("WSA"). Under FLPMA, the Bureau must manage WSAs "so as not to impair the suitability of such areas for preservation as wilderness." whether or not it believes them to be suitable for such preservation. 43 U.S.C. § 1782(c). The Bureau sets out its policies for the administration and management of WSAs in Manual 6330 ("Management of Wilderness Study Areas") (BLM 2012). There are seven classes of allowable exceptions to the non-impairment standard. *See* Manual 6330 at 1-11. Even when a use or facility may be allowable under one of the exceptions, "the BLM will endeavor to allow only the least impairing activities that facilitate the use and/or facility in order to avoid unnecessary impacts to wilderness characteristics." *Id*. Sub-section (f) of the exceptions list provides that actions that "clearly benefit" a WSA "by protecting or enhancing [wilderness] characteristics" are "allowable even if they are impairing, though they must still be carried out in the manner that is least disturbing to the site." *Id*. at 1-13.

Under the 2015 ARMPA, RDF 8 for Livestock Grazing (App'x C at C-8), which the Bureau referenced in some of last year's RNA-specific EAs, directs the agency to "[p]lace new, taller structures . . . out of line of sight or at least 1.2 miles from occupied leks, where such structures would increase the risk of avian predation." But RDF 8 applies only to "taller structures"—not low structures like fences. 2015 ARMPA, App'x C at C-8; *compare* 2015 ARMPA, App'x B at B-1 (distinguishing "Tall structures (e.g., communication or transmission towers, transmission lines)" from "Low structures (e.g., *fences*, rangeland structures)") (emphasis added); *see also, e.g.*, Oregon Sage-Grouse ARMPA Conformance Review Worksheet for Dry Creek Bench and Lake Ridge Key RNAs, at 6 ("No taller structures are proposed for this project, therefore this RDF does not apply.").

In any event, the pertinent question is whether any fencing inside a given 1.2-mile lek buffer will provide a "conservation benefit." 2015 ARMPA, App'x B at B-2. In short, nothing in the 2015 ARMPA, nor in this 2024 DEIS, indicates that fencing is not allowed in WSAs—and the 2015 FEIS makes clear how fencing off Key RNAs *will provide* a conservation benefit. Moreover, in each situation ONDA has reviewed, it appears fencing would also conform to applicable visual resource requirements. For example, the lands where the Dry Creek Bench and Lake Ridge Key RNAs occur are classified as VRM Class 1 because they each are situated within a WSA. ONDA agrees, for example, with the Bureau's conclusion (in the 2023 EA for these RNAs) that the "long-term effect of the construction of the fence [in Dry Creek Bench RNA] would conform to VRM I" for Twelvemile Creek WSA because the fence "would be either screened from view of primary travel corridors by landform and vegetation, or the project elements are small enough and common enough in these landscapes so the level of change would be very low and would not attract attention." 2023 Dry Creek Bench/Lake Ridge EA at 29.

E. Allocating Ungrazed Wilderness Study Areas to New Livestock Grazing Would Violate FLPMA.

Finally, binding Bureau policy makes clear that "[n]ew grazing management *is not a grandfathered use* and in all cases may only be established if it meets the non-impairment standard or one of the exceptions." 6330 Manual at 1-18. Clearly new grazing, where it is currently not allocated and therefore not presently allowed, could not satisfy the non-impairment requirement because (1) it is more than temporary, and (2) it would create surface disturbance.

See id. at 1-10 (to meet the FLPMA non-impairment standard, any use or activity in a WSA "must be both temporary and not create surface disturbance"). Permitted livestock grazing is not temporary, and it creates surface disturbance through "disruption of the rock, soil, or vegetation, including vegetative trampling, that would necessitate reclamation, rehabilitation, or restoration in order for the site to appear and function as it did prior to the disturbance." *Id*.

One of the seven non-impairment exceptions is grandfathered uses, which includes grazing. *Id*. at 1-12. But, in the grazing-specific section of the manual, the Bureau explains (under "Changes in grazing practices") that "[n]ew grazing management is **not** a grandfathered use and in all cases may only be established if it meets the non-impairment standard or one of the exceptions." *Id*. at 1-18 (underlining and boldface added). Portions or all of the Key RNAs designated in the 2015 ARMPA were allocated as no longer available for livestock grazing, under the 2015 ARMPA which is now part of the current land use plans in eastern Oregon. They have been unavailable for (not allocated to) livestock grazing for nearly a decade now. Newly allocating (or "reallocating," as it were) these areas to livestock grazing would require the Bureau to review and make a determination that any such grazing "meets the non-impairment standard." *Id*. at 1-18; *see also id*. at 1-10 ("The BLM will review all proposals for uses and/or facilities within WSAs to ascertain whether the proposal would impair the suitability of the WSA for preservation as wilderness."). The Bureau has failed to do so in the DEIS.

F. If the Bureau Undertakes the Analyses and Determinations Required by the ACEC Regulations, WSA Guidance, and 2015 ARMPA, it Nevertheless Should Retain Most of the Existing Ungrazed Scientific Reference Areas or Expand Them.

With these comments in mind—and assuming that the Bureau performs the required analyses and determinations required by ACEC regulations, WSA guidance, and the 2015 ARMPA, and thus can lawfully adjust the areas designated as unavailable for grazing in the 2015 ARMPA—we turn to specific analyses of both existing Key RNAs and additional RNAs and/or ACECs that should also be considered for inclusion as ungrazed scientific reference areas.

Existing Key RNAs

Key RNAs highlighted in red are ones for which ONDA disagrees with the Bureau's decision to reduce or eliminate ungrazed acres. ONDA *may* support those highlighted in yellow if the Bureau's proposed plan amendment explicitly includes fencing the ungrazed research areas and makes additional adjustments described for each. Key RNAs highlighted in green are ones where ONDA can support the modest adjustments and rationales offered. We also incorporate by reference and attach each of our letters providing detailed comments and supporting materials on the Bureau's site-specific proposals for making RNAs unavailable to grazing.

Vale District, Malheur Field Office—

- **BLACK CANYON KEY RNA** (EA published summer 2023 and public comment period closed Sept. 5, 2023). The Bureau's preferred alternative in the DEIS would completely eliminate the ungrazed scientific research area. 2024 DEIS Appx. 17-6.

In its comments on the Bureau's environmental assessment ("Black Canyon EA"), ONDA supported Alternative 2 because only the material barrier of a fence can guarantee the research area will be physically inaccessible to cattle. Importantly, the Bureau made clear in its EA that the relatively minor impacts of fencing are outweighed by the indispensable conservation benefits that will result from the baseline information and scientific research generated at this study area. Yet, inexplicably, the Bureau now proposes to reallocate the entire RNA to grazing. 2024 DEIS Appx. 17-6. The agency's reasons are inconsistent with its prior findings, including its determination that the full 15 areas made unavailable for grazing in the 2015 ARMPA are "the minimum number" needed to "provide sufficient replication and support a coherent research plan" that will generate data with the necessary "statistical power" to make meaningful land management decisions. Oregon 2018 FEIS at 2-4, 4-7, 4-8.

First, the Bureau states the RNA should be reallocated as available for grazing because it "is largely inaccessible to livestock . . . due to topography." *Id*. at 17-8. If it is true that cattle cannot access the area, then there is no rational reason for the area to be allocated to grazing. Put differently, the DEIS offers no explanation as to why an area "largely inaccessible to livestock" should be allocated to livestock grazing.

Second, the Bureau states the RNA should be reallocated as available for grazing because "[n]ew fence construction to exclude livestock would be in an area identified by the BLM as possessing wilderness characteristics." *Id*. (referring to the Trail Creek Lands with Wilderness Characteristics or "LWC" unit). But the Bureau in 2023 already determined (and ONDA agrees) that adding 1.6 miles of fence would result in "minimal" impacts to naturalness. Black Canyon EA at 18. Plus, the ungrazed reference area created by tying off existing fencing would, in fact, *improve* both naturalness and the BLM-recognized supplemental wilderness value of sage-grouse. *See* EA at 16, 17. As the Bureau explained, "[t]he unprotected unit [under the SEORMP plan amendment[10]] *would not lose its wilderness characteristics*." EA at 19 (emphasis added); *see also* EA at 19–20 (most of the RNA area is VRM class 2, and the proposed fence would be consistent with limiting to "low" visual impact by retaining the existing character of landscape).

Finally, the Bureau states the RNA should be reallocated as available for grazing because "[c]urrent conditions are conducive to meeting scientific research objectives without the need to make the area unavailable to grazing, thus eliminating the need for fence construction." This makes no sense from a scientific standpoint. Only the material barrier of a fence can physically secure the *ungrazed condition* necessary to establish "undisturbed baseline reference areas" that can "serve as areas for comparison to [grazed] areas" and "allow[] natural succession to proceed." 2015 ARMPA at 2-33; 2015 FEIS at 8-21; *see also* 2024 DEIS Appx. 17-7 ("Vegetative communities in this Key RNA that are important to [sage-grouse] habitat continue to be present."). As the authors of one relevant study explain, "livestock exclosures *are essential research tools* for the study of ecosystem processes, recovery, and to better inform livestock management." Kauffman *et*

[10] *See* Notice of Availability of the Record of Decision and Approved Resource Management Plan Amendment for the Southeastern Oregon Resource Management Plan, Vale District, Oregon, 89 Fed. Reg. 14,090 (Feb. 26, 2024). The Bureau decided not to include the Trail Creek LWC as a "protected" LWC in the final SEORMP plan amendment.

al. (2022b) (emphases added). Even where livestock "typically" do not drift to a given area, the scientific method demands certainty in order to produce meaningful information for land managers. And again: if livestock cannot access the area, then what rational explanation is there for allocating the area as available for livestock grazing?

- **MAHOGANY RIDGE RNA** (CX published summer 2023 and public comment period closed Sept. 5, 2023). The Bureau's preferred alternative in the DEIS would reduce the size of the area closed to grazing from 155 acres to 140 acres. 2024 DEIS Appx. 17-35.

  The DEIS makes clear this is a crucial habitat area. The RNA "is within PHMA and is part of the Cow Lakes Priority Area of Conservation." *Id*. at 17-36.[11] It is located on the edge of bighorn sheep core herd range; is winter range for deer; and is utilized by deer and elk year-round. *Id*. The Oregon Department of Fish and Wildlife ("ODFW") has categorized this area as a "top 1%" Priority Wildlife Connectivity Area ("PWCA") – Region. *Id*. The Bureau's 2023 categorical exclusion ("CX") analysis supported the fact that the relatively minor impacts of fencing are outweighed by the indispensable conservation benefits that will result from the baseline information and scientific research generated at this study area.

  The Bureau proposes to reduce the size of the ungrazed RNA by 15 acres "to avoid or reduce resource conflicts," including use by Bighorn sheep and minimizing disturbance from fence construction and maintenance. *Id*. at 17-37. ONDA agrees that this very modest proposed modification is reasonable and adequately justified in the DEIS, but notes that the Bureau already decided to fence the 155-acre closure area, through its August 15, 2023 CX decision. The EIS must clarify that the fence has already been approved. *See, e.g.*, 2024 DEIS Appx. 17-37 (confusingly referring to a "potential new fenceline" even though the fenceline—for the 155-acre 2015 closure area—has already been approved).

- **NORTH RIDGE BULLY CREEK RNA** and **SOUTH RIDGE BULLY CREEK RNA** (EA published fall 2023 and public comment period closed Oct. 17, 2023). The Bureau's preferred alternative in the DEIS would completely eliminate both of these ungrazed scientific research areas. 2024 DEIS Appx. 17-38 to -44.

  The Bureau provides two reasons purporting to justify the proposal to reallocate these areas to grazing. Neither is supportable on the record before the agency.

  First, the Bureau states the RNA should be reallocated as available for grazing because installing fencing would "conflict with" Required Design Features ("RDF") in Appendix C of the 2015 ARMPA. 2024 DEIS Appx. 17-41, -44. The Bureau misreads and fails to fully apply the 2015 ARMPA with regard to whether and under what circumstances new fencing is allowed in sage-grouse habitat. Appendix B of the 2015 ARMPA requires the Bureau to undertake a "conservation benefit" analysis and make a determination as to

[11] PACs are synonymous with Oregon Department of Fish and Wildlife Core Areas. The 2015 ARMPA contains a number of PAC-level adaptive management habitat and population triggers that form an important component of the Bureau's sage-grouse conservation plan in Oregon.

whether the fencing explicitly contemplated in the 2015 ARMPA justifies a departure from the plan's default lek buffer distances. Importantly, the Bureau already decided in the 2015 ARMPA that "range improvements *which provide a* ***conservation benefit*** to [sage-grouse] ***such as fences*** for protecting important seasonal habitats, ***meet the lek buffer requirement***." 2015 ARMPA, App'x B at B-2 (emphases and boldface added); *see also* 43 U.S.C. § 1732(a) (requiring that BLM "shall manage" the lands "in accordance with" land use plans).

The Bureau's conclusory "conflicts with" statement also fails to actually consider and determine, as provided in Appendix C of the 2015 ARMPA, whether another "plan-level protection" would "provide equal or better protection for [sage-grouse] or its habitat." 2015 ARMPA, App'x C at C-1. It is true that the 2015 ARMPA requires the Bureau to apply various buffers and seasonal restrictions, listed in Table 2-3, for management actions in priority and general sage-grouse habitat areas. 2015 ARMPA at 2-7 (MD SSS-9). In so doing, "the BLM will *apply* the lek buffer-distances identified in . . . Appendix B." *Id*. (emphasis added). Both Table 2-3 and Appendix B provide for a 1.2-mile buffer for fences and other low rangeland structures. 2015 ARMPA at 2-8 and App'x B at B-1.

However, the Bureau overlooks that the 2015 ARMPA unambiguously requires the agency to "apply the lek buffer-distances specified as the lower end of the interpreted range in the report *unless justifiable departures are determined to be appropriate*." 2015 ARMPA, App'x B at B-1 (emphasis added). The 2015 ARMPA therefore contemplates that the Bureau may not apply the lek buffers automatically but, instead, must first consider whether there are justifiable departures from those buffer distances—just as Appendix C requires the agency to determine whether a variation in RDFs is justified by another "plan-level protection" that "provides equal or better protection for [sage-grouse] or their habitat." 2015 ARMPA, App'x C at C-1. "Justifiable departures to decrease or increase from these distances, based on local data, best available science, landscape features, and other existing protections (e.g., land use allocations, state regulations) *may be appropriate* for determining activity impacts." 2015 ARMPA, App'x B at B-1 (emphasis added).

The Bureau also fails to address the solutions proffered by ONDA in its October 17, 2023 comment letter. ONDA pointed out that its preferred "Fence and Combine" alternative would result in a net of 2.4 miles of new fence, *fewer than the 2.8 miles* the Bureau had anticipated (1.8 miles for South Ridge Bully Creek RNA and 1.0 miles for North Ridge Bully Creek RNA) when it approved the 2015 ARMPA. Plus, reconfiguring Saddle Reservoir—to make it *available*, not closed, to permitted livestock—would in fact leave more acres available to grazing. The Bureau offers no explanation for its failure—either in the RNA-specific EA or here in the plan amendment EIS—to consider this eminently workable alternative.

The second reason the Bureau offers to justify the proposal to reallocate these areas to grazing is that livestock management "has not had a negative impact on the relative and important values identified for the RNA." 2024 DEIS Appx. 17-41. This is irrelevant and misunderstands the purpose of the Key RNA closures. The Bureau's decision to use selected Key RNAs as plant community reference areas is not a punishment for bad grazing or a mechanism to address grazing problems in these areas; rather, it is an

exercise in sound land and resource management, supported by FLPMA and a record replete with explanation and analysis of the threats challenging the survival of the sage-grouse and the measures the Bureau and leading expert agencies have developed to address the crisis—including adaptive management based on control study sites and scientific research.[12]

Again, the Bureau described that these ungrazed reference areas will provide "baseline vegetation information to document" changes in unique plant communities, "serve as areas for comparison to [grazed] areas," and "document vegetational shifts" associated with climate change. Oregon 2015 FEIS at 8-21. Removing grazing disturbance and conducting subsequent scientific research is an irreplaceable prerequisite to understanding how "natural successional processes would proceed" (in the absence of grazing) in plant communities known to be essential for sage-grouse survival and recovery. Oregon 2015 FEIS at 2-46; *see also* 43 C.F.R. §§ 8223.0-6 (RNAs are a "unique type of ACEC created to preserve examples of all significant natural ecosystems *for comparison with those influenced by humans*"), 8223.0-5(a) (the "primary purpose" of RNAs is "research and education").

- **SPRING MOUNTAIN RNA** (BLM stated earlier this year that it expected to release an EA for public review in March 2024, *see* Joint Report at ¶ 2.b). BLM's preferred alternative in the DEIS would completely eliminate the ungrazed scientific research area. 2024 DEIS at App'x 17-53.

  Unlike other analyses, the DEIS's rationale for reallocating this area to grazing is more considered. ONDA agrees that the factors discussed—including maintenance challenges and the fact that the area is not easily accessible, the fact that the area is an important trailing route for livestock operators, concerns about springs inside and outside of the RNA, and concerns about impacts to Spring Mountain LWC—could support a decision to eliminate the ungrazed research area, so long as the Bureau adds another Key RNA of comparable size that is unavailable for grazing to ensure sufficient data for research.

  We note, however, that the fact that the area burned in a 2007 wildfire should not necessarily be a disqualifying factor. Indeed, there is a strong argument that establishing long-term ungrazed reference areas in currently healthy sagebrush plant communities *as well as* burned areas that represent *recovering* sagebrush plant communities, would actually serve as an important element of the ARMPA Key RNAs research network. ONDA therefore urges the Bureau to consider a smaller or better situated research site in this or another burned-but-recovering area to include this important study opportunity.

[12] If the Bureau *is* going to consider whether or not grazing is impacting the area, then it must acknowledge that court-ordered compliance checks in 2023 showed 20 head of cattle in South Ridge in May, and 10–12 head in both North and South in October. BLM issued permittee Dearing a trespass notice in October. *See Or. Nat. Desert Ass'n v. Bushue*, Joint Report on Implementation of the Stipulated Remedy (ECF 177) [191] ¶ 5 (D. Or. Apr. 4, 2024) (hereafter "Joint Report"). But again: this was *not* a factor in establishment of the Key RNAs in 2015. *See also W. Watersheds Project v. Schneider*, 417 F. Supp. 3d 1319, 1333 (D. Idaho 2019) (explaining, in enjoining the 2019 amendments, that "[t]he BLM had a duty to explain any departure from prior norms" and "[a]n administrative agency is not allowed to change direction without some explanation of what it is doing and why.") (citations omitted).

See, e.g., Kauffman *et al.* (2022a) (explaining projected climate change impacts in southeastern Oregon in the coming century, including changes in precipitation and temperature regimes and the scope and frequency of wildfire).

- **DRY CREEK BENCH RNA** (EA published summer 2023 and public comment period closed Oct. 10, 2023). The Bureau's preferred alternative in the DEIS would completely eliminate the ungrazed scientific research area. 2024 DEIS Appx. 17-9.

  In its comments last fall, ONDA supported the Bureau's Alternative 2 in the EA for Dry Creek Bench RNA, in which the Bureau proposed to "[c]onstruct physical barrier(s) along areas within the Key RNA boundaries allocated as 'unavailable to livestock grazing' through the 2015 ARMPA." Physical barriers are necessary to ensure that livestock cannot access the area unavailable for grazing and ensure that it will remain an ungrazed reference area suitable for scientific research. The Bureau's reasons for now abandoning that proposal and *eliminating* the ungrazed research area are not convincing.

  First, the Bureau states the RNA should be reallocated as available for grazing because the area has "historically received limited use by livestock" and the "rugged nature of the area naturally limits livestock use in this Key RNA." 2024 DEIS Appx. 17-12. Again, if livestock already do not much access and use this area—put differently, if permittees don't much rely upon this area for forage for their cattle—then reversing course and making it available for grazing makes very little sense.

  And again, the purpose of the ungrazed Key RNAs is to establish wholly ungrazed baseline reference areas. The Bureau already has more than 12 million acres of other areas that "partly" or "sometimes" grazed; what the agency *is missing* are control area references that are completely unaffected by livestock. *See* Oregon 2018 FEIS at 4-7 (explaining that ungrazed Key RNAs will provide essential new information because "the lack of large representative tracks of ungrazed habitat makes it nearly impossible to determine and monitor the actual consequences of livestock grazing"); *see also* Oregon 2015 FEIS at 2-18 (12,083,622 acres of public land still available for grazing in sage-grouse habitat in eastern Oregon); Oregon 2018 FEIS at 2-4, 4-7, 4-8 (areas made unavailable to grazing by the 2015 ARMPA were "the minimum number" to "provide sufficient replication and support a coherent research plan" that will generate data with the needed "statistical power" to make meaningful land management decisions).

  For the same reason, the fact that a 2015 Biological Opinion establishes a two-years-grazed/two-years-rested rotation is inapposite.

  Second, the Bureau states the RNA should be reallocated as available for grazing because "this portion of the pasture's vegetative community is in outstanding condition." 2024 DEIS Appx. 17-12. But this was a primary reason why the area was identified as a Key RNA in the first place: because it is critical for sage-grouse conservation both because of its high habitat value and high scientific and management value as reference areas to gauge plan effectiveness. *See* Oregon 2015 FEIS at 2-44 to -45. These are precisely the places where scientists need to study how healthy sagebrush plant communities respond to climate change in the absence of disturbance from livestock grazing. *See* Oregon 2015 FEIS at 8-21 (explaining that ungrazed reference areas will provide "baseline vegetation

information to document" changes in unique plant communities and "document vegetational shifts" associated with climate change).

Finally, the Bureau states the RNA should be reallocated as available for grazing because of unspecified impacts to wilderness values in the 28,000-acre Twelvemile Creek WSA. 2024 DEIS Appx. 17-12. This is part of the vast, 208,000-acre roadless area consisting of the 162,000-acre Trout Creek Mountains WSA Group (BLM 1991), plus another 46,106 acres of contiguous LWCs.[13] It will require about 4.0 miles of fence to close Dry Creek Bench Key RNA to livestock. This is a minute impact when compared to the 145 unnatural features—including 32 fences totaling 60 miles—that already exist in the Trout Creek Mountains WSA Group—but which the Bureau *already determined do not undermine* the area's overall apparent naturalness, for wilderness purposes. *See* BLM 1991 Wilderness Study Report, Volume 1 at 559.

This 622-acre Key RNA, a miniscule portion of the 33,449-acre Green Ponds Pasture, itself but a fraction of the 339,316-acre 15-Mile Community Allotment, should be fenced off and closed to grazing so that the Bureau can collect crucial scientific information that will serve a "significant public good." *See Bushue I*, 644 F. Supp. 3d at 842. The reasons offered in support of reversing course in the preferred alternative are unconvincing.

- **LAKE RIDGE RNA** (EA published summer 2023 and public comment period closed Oct. 10, 2023). The Bureau's preferred alternative in the DEIS would reduce the size of the ungrazed scientific research area from 778 acres to 13 acres. 2024 DEIS Appx. 17-31.

  The Bureau states that modifying the size and location of the closure area would avoid impacts to wilderness values and nearby sage-grouse leks. 2024 DEIS Appx. 17-33 to -34. As ONDA explained above and in our EA comment letter, the record makes clear that the *conservation benefit* of fencing off ungrazed scientific research areas outweighs limited impacts to wilderness values and leks.

  Even with the dramatically reduced 13-acre closure area, the Bureau fails to commit to fencing the area. *See* 2024 DEIS Appx. 17-34 ("Construction of a new fence exclosure would be one way of achieving these objectives."). Only the material barrier of a fence can *guarantee* the research area will be physically inaccessible to cattle, as required by the 2015 ARMPA, and ensure the integrity of scientific studies comparing grazed and ungrazed areas. After nearly 10 years of analysis, including preparation of three EISs and one EA, the Bureau has before it all the information it needs to decide now where all necessary fencing should be installed. And, of course, the agency is under court order to implement the grazing closures on "the portions of the key RNAs *specified in the 2015 ARMPA* without further delay." *Bushue I*, 644 F. Supp. 3d at 844 (emphasis added).

  Failing to immediately finalize a decision to fence off the ungrazed research area also would be unreasonable in light of the record indicating that grazing trespass is a problem here. The Bureau's 2023 EA indicated that "expected" trespass by livestock occurs in the

[13] These are: Willow Creek Contiguous (OR-036-087), Oregon Canyon Mountain (OR-036-050), Whitehorse Butte (OR-036-045), Oregon Canyon Contiguous (OR-036-035), Twelve Mile Creek North (OR-036-044), Twelve Mile Creek West (OR-036-044), and Twelve Mile Creek East (OR-036-044).

Key RNA. *See* Lake Ridge Key RNA EA at 21. The EA claimed the trespass was "minimal," *id*. at 19, 21, but neither the EA nor this DEIS provides any data about how many instances of livestock using the Key RNA have occurred in recent years, nor any plausible rationale for why instances of livestock entry have been "minimal" in the past and would be expected to continue to be "minimal." Moreover, Bureau compliance checks in 2023 showed that there were, once again, 14 trespass cattle in the Key RNA. *See also* Joint Report ¶ 5.

Finally, the Bureau arbitrarily fails to consider either of the reasonable alternatives offered by ONDA in its EA comments last fall. ONDA asked BLM to consider a regular, full-fencing alternative (3.4 miles) and also a "plateau cutoff" alternative (1.3 miles plus possible additional gap fences, *e.g.*, at the jeep trail from Roy Reservoir).[14] Under any of these iterations, the closure area is a fraction of the vast, 26,278-acre Simmons Gulch Pasture, which itself is a fraction of the 55,637-acre Harper Allotment. The DEIS provides no rational basis that could support the preferred alternative's dramatic abandonment of nearly the entire ungrazed scientific research area in the Lake Ridge RNA.

- **SOUTH BULL CANYON RNA** (EA published last fall and public comment period closed on Oct. 31, 2023). The Bureau's preferred alternative in the DEIS would reduce the size of the ungrazed scientific research area from 749 acres to 257 acres. 2024 DEIS Appx. 17-49.

  ONDA would support modification of the configuration of the ungrazed area here only if the Bureau proposes and decides *in this EIS and RMPA decision-making process* to permanently fence off the area. *See* 2024 DEIS Appx. 17-52 (declining to decide whether or not the closure area would be fenced under the preferred or any other alternative). Only the material barrier of a fence can *guarantee* the research area will be physically inaccessible to cattle, as required by the 2015 ARMPA, and ensure the integrity of scientific studies comparing grazed and ungrazed areas. After nearly 10 years of analysis, including preparation of three EISs and one EA, the Bureau has all the information it needs before it to decide now where all necessary fencing should be installed. And again: the Bureau is under court order to implement the grazing closures on "the portions of the key RNAs *specified in the 2015 ARMPA* without further delay." *Bushue I*, 644 F. Supp. 3d at 844 (emphasis added).

  Not fencing the area, or delaying a decision on fencing, would be arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law (including the *Bushue* summary judgment ruling and remedy order). In 2015, the Bureau found that "[p]ermitted activities that could impair scientific or education values of the RNAs" include "livestock grazing." Oregon 2015 FEIS at 3-134 to -135; *see also* BLM, Assessment of Relevance and Importance for South Bull Canyon ACEC/RNA, 6 (hereafter "South Bull Canyon

[14] ONDA even described a "Close Plateau Without Fencing" alternative, suggesting that managing a relatively smaller unfenced "pinch point" (*i.e.*, the location of the 1.3 miles of proposed fencing shown on Map 2 attached to ONDA's comment letter) could *reasonably* be easier than managing a far longer, 3.4-mile unfenced boundary. In its EA, the Bureau indicated that this corner of the very large Simmons Gulch Pasture is not much used by permittees.

ACEC/RNA Assessment") (1996) (describing that "the plant communities are vulnerable to the impacts of livestock grazing" and "grazing poses a threat to the condition of the vegetative community for which this ACEC was nominated" and "[t]rampling and overgrazing would have a detrimental effect on the target natural communities"). That is consistent with the Bureau's earlier finding that "restricting livestock grazing from the [South Bull Canyon] area would protect these [botanical] values." South Bull Canyon ACEC/RNA Assessment at 6; *see also* South Bull Canyon RNA EA at 18 (BLM stating, "Without a physical barrier, occurrences of livestock presence within the Key RNA *are expected to occur*.") (emphasis added); *see also* South Bull Canyon RNA EA at 6, 8, 20 (noting numerous times that "incidental livestock use" is likely in the absence of fencing).

> The South Bull Canyon ACEC *needs fencing to exclude livestock* as there is considerable grazing in the immediate area that could damage the target natural communicates. Fortunately there is already fencing in place along the west and south sides of the . . . ACEC so fencing requirements are not overwhelming. As stated earlier, the terrain is relatively gentle and soils are deep so fencing should not be exceedingly costly.

South Bull Canyon ACEC/RNA Assessment at 6 (emphasis added); *see also* BLM, Observation Record – Area of Critical Environmental Concern (June 21, 2004) ("As in past reports cattle use and degradation is associated with water sources for cattle."); BLM, Observation Record – Area of Critical Environmental Concern (Aug. 17, 2001) ("Generally unchanged from 3 or 4 years ago. Usual overuse by cattle for some distance around waterholes.").

Accordingly, failing to study any alternative that guarantees (through fencing) that required baseline study and research is not disrupted by grazing cattle on an annual basis is *inconsistent with* the Bureau's land use plan requirements for Key RNAs. 2015 Oregon ARMPA at 2-18 to -19 and 2-33 (Objective LG 2, MD LG 1, Objective SD 1, and Objective SD 4); 43 U.S.C. § 1732(a) (requiring that BLM "shall manage" the lands "in accordance with" these land use plan requirements); *see also* 43 C.F.R. § 8223.0-5(a) (the "primary purpose" of RNAs is "research and education"); *id.* § 8223.1(b), (c) ("No person shall use, occupy, construct, or maintain facilities in a manner inconsistent with the purpose of the research natural area" and "[s]cientists and educators shall use the area in a manner that is nondestructive and consistent with the purpose of the research natural area.").

Finally, as we described in our October 2023 comments, fencing the entire area made unavailable to grazing in the 2015 ARMPA would not impair wilderness values in the Prava Peak LWC. Based on the Bureau's analysis and our own inventory information, ONDA believes that adding about 3.0 miles of fence to fully close the area made unavailable for grazing would result in minimal or no impacts to naturalness.

In fact, the full ungrazed reference area created by tying off existing fencing would *improve* naturalness and other supplemental wilderness values present in this area, including Priority sage-grouse habitat. Removing or otherwise rehabilitating the "unreliable" Prava Peak Reservoir No. 2, situated in the center of the closure area, would

also improve wilderness values. *See* South Bull Canyon RNA EA at 18 (describing that this reservoir "can be unreliable" and is not critical to grazing management compared Prava Peak Reservoir No. 1 and the three other reservoirs near the RNA's southern and eastern boundaries); *see also* 2015 Oregon ARMPA at 2-19 (MD LG 1 directing BLM to "[d]etermine *whether to remove* . . . water storage facilities (e.g. reservoirs[])]" in Key RNA closure areas) (emphasis added).

In short, building this modest stretch of tie-in fencing to close off the 749-acre Key RNA area (or even a similarly modest amount of fencing to close off the modified ungrazed area) would not cause the far larger, 20,315-acre LWC to lose is wilderness character. *See* South Bull Canyon RNA EA at 22 (describing that "14 earthen reservoirs, four developed springs, 23.2 miles of rangeland fence, one rangeland fenced enclosure, and 43.5 miles of 22 primitive route segments" scattered throughout the LWC "all . . . appear substantially unnoticeable to the average visitor").

- **TOPPIN CREEK BUTTE RNA** (BLM expects to release an EA for public review in "fall of 2024," *see* Joint Report ¶ 2.b). The Bureau's preferred alternative in the DEIS would reduce the size of the ungrazed scientific research area from 2,865 acres to 239 acres. 2024 DEIS Appx. 17-59.

  The reasons the DEIS provides for reducing the size of the ungrazed research area are that "grazing use is historically light," the larger area "would not provide research benefits at a level that would warrant the impacts to other values," the smaller area was not affected by past wildfire, and impacts (from fencing) to wilderness values in the Owyhee River Canyon WSA[15] would be reduced. 2024 DEIS Appx. 17-61 to -62.

  ONDA would support modification of the configuration of the ungrazed area here only if the Bureau proposes and decides *in this EIS and RMPA process* to fence off the area. Only the material barrier of a fence can *guarantee* the research area will be physically inaccessible to cattle, as required by the 2015 ARMPA, and ensure the integrity of scientific studies comparing grazed and ungrazed areas. Again, the record currently before the Bureau provides all the information the agency needs to decide now to install the fencing necessary to guarantee a scientifically defensible research area. ONDA would also want to see further Key RNAs unavailable for grazing designated to replace the acreage removed from scientific study in the substantial reduction of the area closed on this Key RNA.

Lakeview District, Lakeview Field Office—

- **FISH CREEK RIM RNA** (scoping letter for all three Lakeview Field Office RNAs issued in 2022 and EA expected for public review "this spring," *see* Joint Report ¶ 2.a). The Bureau's preferred alternative in the DEIS would reduce the size of the

[15] The DEIS mistakenly states that the RNA is situated within the "Oregon River Canyon" WSA. BLM 2024 DEIS Appx. 17-61. In fact, Toppin Creek Butte Key RNA sits within both the Owyhee River Canyon WSA (3-195) and the Lookout Butte WSA (3-194). *See* SEORMP (2002) at 101.

ungrazed scientific research area from 2,750 acres to 95 acres. 2024 DEIS Appx. 17-16.

The reasons the DEIS provides for reducing the size of the ungrazed research area are that it would be "difficult" to build exclosure fencing, a modified boundary would reduce the amount of fencing needed, and some (unspecified) areas of this large RNA do not contain sage-grouse habitat. 2024 DEIS Appx. 17-19.

While some modest modification of the 2,750-acre Key RNA area may be justified, the DEIS fails to provide specific information to support any such change—and certainly not enough information to support reducing the ungrazed scientific research area by a factor of nearly 30. For example, the map provided in the DEIS does not show the locations of the different plant communities (including mountain mahogany) referenced, nor the locations of wilderness boundaries or sage-grouse leks. 2024 DEIS Appx. 17-17. By contrast, it does show two named roads (and several unnamed spurs) traversing the Key RNA area, which undermines the contention that it is difficult to access fence line locations.

In the Lakeview RMP, the Bureau explained that "[p]resence of known critical habitat for greater sage-grouse satisfies the criteria for relevance and importance designations as an ACEC." Lakeview RMP at A-198. The agency further noted that the "terrestrial ecosystem cells are *unique and in need of scientific study, as are the Bureau sensitive plant species* [dwarf lousewort and nodding melic grass]." *Id.* (emphasis added). Without a map specifically identifying the sage-grouse and non-sage-grouse habitat areas throughout this large Key RNA, it is impossible for the public to review the Bureau's proposal—and, therefore, impossible for the Bureau to make an informed decision.

The Bureau also comments that "[p]ortions of the existing low sagebrush/grassland community would be located outside the modified exclosure creating both grazed and ungrazed (control) sites in the same area suitable for future research related to the effects of grazing." 2024 DEIS Appx. 17-19. This is no justification for reducing the scientific research area; rather, this is the entire point of the Key RNAs in the first place. The Bureau already has more than 12 million acres of adjacent *grazed* areas to compare against this and the other twelve *ungrazed* Key RNAs established in the 2015 ARMPA. Reducing or eliminating the ungrazed reference areas that the Bureau currently is lacking makes no sense, and the Bureau provides no rational explanation as to why it somehow needs *more* grazed comparison areas.

Finally, the Bureau also offers that "the proposed exclosure modification would substantially reduce negative economic effects to affected livestock operators." 2024 DEIS Appx. 17-20. There is simply no support for this assertion. Following a planning process that began in 2011, the Bureau in 2015 placed livestock operators affected by Key RNA closures on notice that they would need to adjust to those small areas being unavailable for grazing, and they have had a decade now to prepare for the end of grazing in the closed RNAs. *See, e.g.*, Oregon 2015 FEIS at 1-18 (planning process overview), 2-174, 4-181 (likely need to locate alternative forage, increase in costs, and change to livestock rotations); 2015 Oregon ARMPA at 2-18 (table

identifying closed acreages). In 2018, the Bureau calculated that the closures *of all 13* Key RNAs would result in a reduction of just 1,772 AUMs, about 25 percent less than the 2,388 AUM reduction estimated in 2015. Oregon 2018 FEIS at 3-21. The Bureau had already determined in 2015 that even the higher 2,388 AUM figure would have "negligible or no impact" on "grazing" or "socioeconomics." Oregon 2015 FEIS at 4-185, 4-326; *see also Bushue II*, 672 F. Supp. 3d at 1103 n.1 ("the Court noted BLM's 'earlier determination of no economic impact' to [grazing permittees] and determined that any economic impacts do not weigh against" the "significant public good" of removing grazing from the Key RNA reference areas).[16] Simply put, there is no support for any "negative economic effects" assertion, here or in any other of the Key RNAs.

- **FOLEY LAKE RNA** (scoping letter for all three Lakeview Field Office RNAs issued in 2022 and EA expected for public review "this spring," *see* Joint Report ¶ 2.a).[17] The Bureau's preferred alternative in the DEIS would reduce the size of the

[16] Moreover, as of 2010, the Farm sector, of which livestock grazing is a subset, accounted for only 1.8 percent of the combined labor and non-labor income in the seven-county area in eastern Oregon for which the 2015 FEIS evaluated socioeconomic impacts. Oregon 2015 FEIS at 3-174 to 3-175. Farm income in the study area in 2010 was $69.9 million; total labor earnings $1,997.2 million; non-labor income, including dividends, retirement and disability benefits, and contributions to government social insurance, $1,698.9 million. Oregon 2015 FEIS at 3-174 to 3-175. Grazing itself accounts for 53.3 percent of the Farm sector earnings. Oregon 2015 FEIS at 3-182. Even in vast Lake, Malheur, and Harney counties, grazing accounts for just 4.9 percent, 3.8 percent, and 3.2 percent, respectively, of all earnings. *Id*. (These are obtained by multiplying the farm earnings as a share of all earnings for each county by the share of farm cash receipts attributable to livestock. Oregon 2015 FEIS at 3-182.) And the 2,388 AUMs unavailable for grazing in the 2015 Key RNA closures represent only about two-tenths of one percent (0.24 percent) of the 998,919 active AUMs in eastern Oregon. Oregon 2015 FEIS at 2-45, 3-183. Under the Bureau's updated 2018 estimate of only a 1,772 AUM reduction, this percentage shrinks to 0.18 percent. Oregon 2018 FEIS at 3-21. Even using the higher figure, a rough calculation shows that the tiny reduction in permitted AUMs would decrease income from livestock grazing, as a portion of the regional economy, by a total of only about $89,416. (This figure multiplies the previously cited figures for Farm sector income in 2010 in the seven-county area ($69.9 million) by 0.533 (the percentage of Farm earnings attributable to livestock) and then by 0.0024 (the percentage of active AUMs reduced by the Key RNA closures). This is consistent with the Bureau's own analysis of the impact of the Proposed Plan in the 2015 FEIS: it estimated that the Key RNA closures would result in a range of direct and indirect economic effects, from no effect at all up to a high estimate of $100,000 in lost labor earnings and $200,000 in annual output—across all 28 permittees affected by the closures—still probably higher than the actual likely effects because the Bureau later calculated that only 1,772 AUM will actually be reduced. Oregon 2015 FEIS at 4-331. The Bureau factored these adjustments to grazing into its analysis, noting that "more complex pasture rotations" and "changes in livestock rotation or season of grazing," could increase costs for permittees. Oregon 2015 FEIS at 4-191, 4-331.)

[17] BLM issued a decision to construct a 2.4-mile long exclosure fence to exclude about 521 acres on the *west side* of the Foley Lake Key RNA from the Twin Lakes Pasture of the Coyote-Colvin Allotment, on April 24, 2023. The *east side* of Foley Lake Key RNA occurs on the Flint Hills Pasture of the Juniper Mountain Allotment and will be addressed in the Fish Creek-Foley Lake-Rahilly-Gravelly EA referenced above.

ungrazed scientific research area from a total of 1,269 acres, to 521 acres on the west side of the RNA and 276 acres on the east side. 2024 DEIS Appx. 17-22, 17-25.

The reasons the DEIS provides for reducing the size of the east (Juniper Mountain Allotment) half of the ungrazed research area are that it would reduce the amount of fencing needed and "allow both grazed and ungrazed (control) sites to be located in same area for future research related to the effects of grazing on black sagebrush/ grassland and Wyoming big sagebrush/grassland communities." 2024 DEIS Appx. 17-26.

ONDA supports reducing fencing where it can feasibly be done without undermining the research purpose and utility of an RNA and agrees the Bureau's proposed change satisfies that criterion here. ONDA explained above why the "grazing and ungrazed (control) sites" rationale makes little sense in the context of the already-established purpose of the Key RNAs. Again, the Bureau here provides no rational explanation as to why it somehow needs *more* grazed comparison areas on this allotment.

Even so, ONDA will support the Bureau's preferred alternative modifying to 797 acres the ungrazed, fenced Key RNA. This assumes the Bureau will timely complete the needed fencing on the east side of the RNA and the removal of the then-obsolete fencing running north-south through the middle of the area, *see* 2024 DEIS Appx. 17-22, 17-25 ("Approximately one mile of the existing allotment boundary fence could be removed from the middle of the Key RNA once the new exclosure fences are completed."), and also that the Bureau adds ungrazed acreage for scientific study to another existing or newly designated Key RNA.

- **RAHILLY-GRAVELLY RNA** (scoping letter for all three Lakeview Field Office RNAs issued in 2022 and EA expected for public review "this spring," *see* Joint Report ¶ 2.a). The Bureau's preferred alternative in the DEIS would reduce the size of the ungrazed scientific research area from 8,282 acres to 2,025 acres. 2024 DEIS Appx. 17-44. The Rahilly-Gravelly RNA is 18,734 acres in total. *Id*. at 17-46.

  The reasons the DEIS provides for reducing the size of the ungrazed research area are that "it would be difficult to construct exclosure fencing" along parts of the originally identified exclosure boundary, and the modified exclosure area would reduce the amount of fencing needed in sage-grouse habitat including moving fencing further away from two occupied leks. 2024 DEIS Appx. 17-47; *see also id*. at 17-48 (noting "less total fencing and less high-risk fencing" under preferred alternative). The DEIS also states that "[n]ot all of the plant communities described in 2015 ARMPA occur within the . . . area excluded from grazing (Sucker Creek Pasture) or represent plant communities that are important Sage-Grouse habitat." *Id*.

  Beginning with the latter point, there is some confusion in the DEIS. The Bureau first indicates that "[a]pproximately 1,400 acres of this ACEC/RNA contains the plant communities identified in the 2015 ARMPA and they are located within the Nevada Pasture . . . not within the original . . . exclosure area in the Sucker Creek Pasture." 2024 DEIS Appx. 17-46. But then the agency contradicts this statement and says that "[t]he Sucker Creek Pasture *is* the portion of the RNA with [sage-grouse] habitat and

documented [sage-grouse] use." *Id*. (emphasis added). Then the Bureau further explains that the entire Rahilly-Gravelly RNA "is part of the Beaty [Priority Area for Conservation]" and "[t]he *entire RNA* is *classified* as PHMA and nearly all the area is *mapped* as seasonal breeding, summer, and winter sage-grouse habitat. Telemetry data collected across several years has *documented* spring, summer, and winter use *within much of the Key RNA including the Sucker Creek Pasture* . . . . As of 2022 lek surveys, there were 3 occupied and 4 unoccupied leks within the Sucker Creek Pasture." *Id*. at 17-47 (emphasis added); *see also* Lakeview RMP at A-203 (describing that the "[p]resence of known critical habitat for greater sage-grouse satisfies the criteria for relevance and importance designation as an ACEC" and Rahilly-Gravelly RNA "is especially important because it exists in the ecotone where the northern Great Basin meets the sagebrush/bunchgrass steppe").

If, as ONDA believes is true, the entire Rahilly-Gravelly RNA is, in fact, sage-grouse habitat, the Bureau must better explain why it is reducing the ungrazed study area to only encompass one portion of these important seasonal habitat areas and plant communities.

ONDA *may* support the Bureau's proposed adjustment if—

> First, the Bureau's final decision must include fencing. As described above, the agency has all the information it needs to, at the conclusion of this planning process, make a final decision to fence specified boundaries in the Rahilly-Gravelly Key RNA. There is no reason to defer that decision to further planning or environmental review, as the Bureau has already unreasonably delayed implementation of the 2015 closures.
>
> Second, the Bureau's final decision must include that the agency will not only fence specified locations along the exclosure boundary, *but also* that the Bureau will subsequently fence any "portions of natural rim rock . . . used as part of the [exclosure] barrier" (2024 DEIS Appx. 17-48) but which later monitoring shows are not effective at keeping livestock out of the exclosure area.[18]
>
> Third, the Bureau adds ungrazed acreage for scientific study to another existing or newly designated Key RNA to make up for the potential substantial reduction in acreage here.

Finally, the Bureau must amend the incorrect statement in the DEIS that a reduction in AUMs "could not be absorbed by spreading the AUMs across the other pastures of the allotment." 2024 DEIS Appx. 17-48. The permittee, Cahill Ranches, Inc., holds a federally issued permit to graze livestock on public lands. That permit allows Cahill to use not only the Rahilly-Gravelly Allotment, but also five other Bureau-managed

[18] BLM compliance checks conducted pursuant to the Stipulated Remedy in *Bushue* indicated that there were seven instances of trespass cattle in 2023 (involving 3, 3, 1, 18, 20, 5, and 5 cattle between May 3 and July 19). The agency explained that the incursions into the ungrazed research area occurred because of "small numbers of cows getting through the fences from Coleman Lake, Nevada, and Rahilly pastures." Securing the exclosure perimeter is crucial to the baseline information and research purpose of the Key RNA.

allotments. Cahill is authorized to graze up to 4,631 AUMs across the six allotments covered by its permit, including 1,647 AUMs on the Rahilly-Gravelly Allotment. In practice, as Judge Simon noted, Cahill "has not needed to use its full allocation of AUMs on the Rahilly-Gravelly Allotment," and Cahill in 2021 "voluntarily" took "more AUMs of non-use than the key RNA closure reduces." *Bushue I*, 644 F. Supp. 3d at 843. This repeated Cahill's pattern, between 2011 and 2015, of taking an average of 655 AUMs of non-use on the Rahilly-Gravelly Allotment—more non-use than the approximately 630 AUMs the Bureau estimated (in 2015) would be reduced (from Cahill's total permitted 4,631 AUMs on six allotments) by making a portion of the allotment's Sucker Creek pasture unavailable for grazing (much less the 144 AUM reduction calculation in the DEIS for the smaller closure area analyzed under the preferred alternative).

RAHILLY-GRAVELLY ALLOTMENT ACTUAL VS. PERMITTED USE, 2011–2015			
YEAR	PERMITTED AUMS	ACTUAL USE AUMS	NON-USE AUMS
2015	1,647	1,190	457
2014	1,647	570	1,077
2013	1,647	1,027	620
2012	1,647	794	853
2011	1,647	1,377	270
		average AUMs not used each year:	655

The fact that the 2015 ARMPA reduces the grazing operator's AUMs *by less than the amount it has consistently not been using anyway on this allotment* belies any contention that a reduction threatens the viability of Cahill's ranching operation—even without taking into account the 2,984 AUMs Cahill is authorized on five other public land grazing allotments.

In any event, a federally issued grazing permit does not "create any right, title, interest, or estate in or to the lands." 43 U.S.C. § 315b. Rather, the Bureau always retains the "power to modify, fail to renew, or cancel a permit or lease for various reasons." *Pub. Lands Council v. Babbitt*, 529 U.S. 728, 735 (2000) (noting the "leasehold nature of grazing privileges" and that "the grant of grazing privileges [is] discretionary"). Indeed, when it renewed Cahill's grazing permit in 2014, the Bureau expressly advised Cahill of the agency's right to "[a]djust allotment management including levels and areas of authorized use, seasons of use, and grazing systems" to protect the Rahilly-Gravelly RNA. *See also Bushue I*, 644 F. Supp. 3d at 843 ("In addition to the small size of the closures and BLM's earlier determination of no economic impact, [Cahill Ranches has] had more than two years of notice that BLM would be issuing grazing decisions in accordance with the mandated unavailable RNAs. BLM's own regulations indicate that two years are adequate to adjust to the cancellation or modification of a grazing permit.").

Burns District, Andrews Field Office—

- **EAST FORK TROUT CREEK RNA** (EA scoping initiated in 2021, but that process was cancelled after a Range Line Agreement was finalized in 2022). ONDA would support the Bureau's decision to use "a rangeline agreement in lieu of a fence" (DEIS Appx. 17-16) *if* the Bureau in its final decision includes that it will reassess the need for a fence should trespass livestock be detected in the Key RNA in the future. For the same reasons as described above for a number of other Key RNAs, a fence would not impermissibly impair wilderness values or sage-grouse habitat here. The Bureau's December 6, 2021 scoping letter shows that less than one mile of fencing would be needed, on the RNA's southern boundary, to fully tie off the exclosure area.

New Key RNAs and Key ACECs

If the Bureau decides to eliminate or reduce the ungrazed closure areas of any of the Key RNAs, the agency should replace each such eliminated or reduced RNA with a comparable ungrazed closure area on a different ACEC or RNA. In our May 14, 2024 (as revised on June 13, 2024, *see* Appendix C to this letter) comments, ONDA identified 17 ACECs, spanning more than four million acres of BLM-managed public lands—and already determined by the Bureau in 2013 to meet the agency's regulatory relevance and importance criteria—that make up a critical network of potential sagebrush habitat reserves. *See* 2013 DEIS, Appx. J. This already-vetted network of essential habitat areas can serve as a ready-made suite of areas from which to identify and designate replacement ungrazed research areas to account for any adjustments made to the network designated in the 2015 ARMPA.

In addition to the 17 ACEC proposal included in Alternative F in the 2013 draft plan, the Bureau's preferred Alternative D in that plan amendment separately sought to prioritize sage-grouse conservation on dozens of *existing* ACECs and RNAs in Oregon. The Bureau identified sage-grouse as a relevant and important value for seven existing ACECs and RNAs in the state (BLM 2013 DEIS: 3-126), and the Bureau's 2015 analysis also identified eleven existing ACECs known to have active or recently occupied sage-grouse leks (BLM 2013 DEIS: 3-126). *See* Appx. C (attached hereto), Tables 1 and 2. Alternative F in the 2015 FEIS carried forward the Bureau's proposed network of 17 ACECs (4,041,905 acres) from the draft plan, noting that "[t]hese areas all contain [sage-grouse], key natural processes, and systems that are crucial for [sage-grouse]." Oregon 2015 FEIS at 2-178. Moreover, our analyses show that many ACECs contain relevant plant communities and could readily replace any current Key RNAs for which the Bureau decides to eliminate or reduce the ungrazed scientific research areas and allocate those areas instead to livestock grazing. For example—

Hawksie Walksie (17,329 acres)	Percent	Acres
Artemisia arbuscula	9	1,640
Artemisia cana	3	579
Artemisia nova	0.001	0.2
Artemesia rigida	0.003	1
Artemisia tridentata spp. tridentata	13	2,246
Artemisia tridentata spp. vaseyana	14	2,401
A. tridentata spp. wyomingensis	33	5,727
A. tripartite		
A. canescens		
A. confertifolia		
A. spinescens		
Cercocarpus ledifolius		
Populus tricocarpa		
Populus tremuloides		
Purshia tridentata		
riparian, wet meadows, seeps, springs		
Salix sp.		
Sarcobatus vermiculatus	0.004	1
vernal pools, playas, lake margins		present
Totals	*72%*	*12,595*

High Lakes (38,995 acres)	Percent	Acres
Artemisia arbuscula	82	31,965
Artemisia cana	1.6	614
Artemisia nova		
Artemesia rigida		
Artemisia tridentata spp. tridentata	0.006	2
Artemisia tridentata spp. vaseyana	1.5	586
A. tridentata spp. wyomingensis	0.24	95
A. tripartite		
A. canescens		
A. confertifolia	2	823
A. spinescens		
Cercocarpus ledifolius	0.003	1
Populus tricocarpa		
Populus tremuloides	0.01	4
Purshia tridentata		
riparian, wet meadows, seeps, springs		present
Salix sp.		
Sarcobatus vermiculatus		
vernal pools, playas, lake margins		present
Totals	*87%*	*34,090*

Juniper Mountain (6,335 acres)	Percent	Acres
Artemisia arbuscula	29	1,813
Artemisia cana		
Artemisia nova		
Artemesia rigida		
Artemisia tridentata spp. tridentata	0.2	10
Artemisia tridentata spp. vaseyana	14	917
A. tridentata spp. wyomingensis	0.5	30
A. tripartite		
A. canescens		
A. confertifolia		
A. spinescens		
Cercocarpus ledifolius		
Populus tricocarpa		
Populus tremuloides		
Purshia tridentata		
riparian, wet meadows, seeps, springs		
Salix sp.		
Sarcobatus vermiculatus		
vernal pools, playas, lake margins		
Totals	*44%*	*2,770*

Red Knoll (11,122 acres)	Percent	Acres
Artemisia arbuscula	3.5	394
Artemisia cana	0.2	27
Artemisia nova	20	2,195
Artemesia rigida	0.05	5
Artemisia tridentata	0.7	75
Artemisia tridentata spp. vaseyana	0.8	86
A. tridentata spp. wyomingensis	24	2,710
A. tripartite	0.02	2
A. canescens		
A. confertifolia	0.03	4
A. spinescens		
Cercocarpus ledifolius		
Populus tricocarpa		
Populus tremuloides		
Purshia tridentata		
Salix sp.	0.03	4
Sarcobatus vermiculatus	0.03	3
riparian, wet meadows, seeps, springs		present
vernal pools, playas, lake margins		present
Totals	*49%*	*5,505*

Stockade Mountain (1,767 acres	Percent	Acres
Artemisia arbuscula	2.2	39
Artemisia cana		
Artemisia nova		
Artemesia rigida		
Artemisia tridentata	3.3	58
Artemisia tridentata spp. vaseyana	6.6	117
A. tridentata spp. wyomingensis	62	1,092
A. tripartite		
A. canescens		
Atriplex confertifolia		
A. spinescens		
Cercocarpus ledifolius		
Populus tricocarpa		
Populus tremuloides		
Purshia tridentata		
Salix sp.		
Sarcobatus vermiculatus		
riparian, wet meadows, seeps, springs		
vernal pools, playas, lake margins		present
Totals	*74%*	*1,306*

Long Draw (440.6 acres)	Percent	Acres
Artemisia arbuscula		
Artemisia cana		
Artemisia nova	0.26	1
Artemesia rigida		
Artemisia tridentata	56	247
Artemisia tridentata spp. vaseyana		
A. tridentata spp. wyomingensis	7	32
A. tripartite		
A. canescens		
A. confertifolia	6	26
A. spinescens		
Cercocarpus ledifolius		
Populus tricocarpa		
Populus tremuloides		
Purshia tridentata		
Salix sp.	1	5
Sarcobatus vermiculatus	6	28
riparian, wet meadows, seeps, springs		present
vernal pools, playas, lake margins		
Totals	*76%*	*339*

Kiger Mustang (55,536 acres)	Percent	Acres
Artemisia arbuscula	32	17,958
Artemisia cana	0.14	79
Artemisia nova	0.05	29
Artemesia rigida		
Artemisia tridentata spp. tridentata	10	5,749
Artemisia tridentata spp. vaseyana	3	1,572
A. tridentata spp. wyomingensis	1	538
A. tripartite	0.03	19
A. canescens		
A. confertifolia		
A. spinescens		
Cercocarpus ledifolius	0.04	20
Populus tricocarpa		
Populus tremuloides	0.06	36
Purshia tridentata		
Salix sp.	0.004	2.4
Sarcobatus vermiculatus	0.006	3
riparian, wet meadows, seeps, springs	0.02	46
vernal pools, playas, lake margins	0.3	804
Totals	*47%*	*26,855*

Spanish Lake (4,699acres)	Percent	Acres
Artemisia arbuscula	0.27	13
Artemisia cana	1.6	76
Artemisia nova		
Artemesia rigida		
Artemisia tridentata	6	266
Artemisia tridentata spp. vaseyana	1.4	65
A. tridentata spp. wyomingensis	10	468
A. tripartite		
A. canescens		
Atriplex confertifolia	43	2,018
A. spinescens		
Cercocarpus ledifolius		
Populus tricocarpa		
Populus tremuloides		
Purshia tridentata		
Salix sp.		
Sarcobatus vermiculatus	1.3	62
riparian, wet meadows, seeps, springs		
vernal pools, playas, lake margins		present
Totals	*64%*	*2,968*

The Bureau should retain the ungrazed scientific research areas established in the 2015 ARMPA Key RNAs, but if the agency decides to eliminate or reduce the ungrazed closure areas of any of the current Key RNAs, it should replace each such eliminated or reduced RNA with a comparable ungrazed closure area on a different ACEC or RNA.

4.6 Voluntary Grazing Permit Relinquishment

ONDA recommended in our scoping comments that the Bureau of Land Management…

Authorize voluntary grazing permit retirement in greater sage-grouse priority habitat, including as a part of departmental and BLM mitigation policies.

The draft environmental impact statement and the preferred alternative…

Provide that when a permittee or lessee voluntarily relinquishes grazing preference and associated grazing authorization, that the agency will consider converting the covered allotment into a reserve common allotment (BLM 2024 DEIS: 2-112, Table 2-12). Leaving open the possibility of continued grazing on these allotments could be detrimental to the purpose of permit retirement, although the preferred alternative also requires that any temporary, nonrenewable grazing on reserve allotments "benefit [sage-grouse] habitat" and prohits temporary use of reserve common allotments due to drought or over use of allotments (BLM 2024 DEIS: 2-112, Table 2-12, Management Action RM-7).

The best available science—and the Bureau of Land Management's own analyses—recommends closing grazing allotments to grazing use to support sage-grouse management goals.

The Bureau has identified multiple benefits of retiring livestock grazing in sage-grouse habitat, including in Colorado: "[e]limination of livestock grazing . . . would maintain or improve overall watershed health and water quality . . . decrease hoof compaction of soil surfaces. When combined with the annual freeze-thaw cycle, this may decrease soil bulk density and improve soil moisture conditions, which facilitates vegetation germination and root

development. Removing livestock would also increase plant litter and live vegetative ground cover, which would provide more protection from wind and water erosion. Eliminating livestock grazing . . . would also eliminate water quality impacts associated with the deposition of manure and urine into surface water" (Northwest Colorado 2013 DEIS: 776). The Bureau similarly noted in North Dakota that retirement of grazing privileges would likely result in a reduction in conflicts between grazing and other land uses and may improve range health and forage conditions for remaining permitted use in the area (North Dakota 2015 FEIS, vol 1: 4-107). Reducing livestock grazing in sagebrush habitats is also specifically recommended to help increase ecosystem resiliency against invasion by cheatgrass (*Bromus tectorum*), a key threat to sage-grouse, particularly in the western portion of its range (Reisner *et al.* 2013; *see also* Blank and Morgan 2012).

Recommendation: Promote grazing permit relinquishment as presented in the preferred alternative in the proposed final plan and with an additional option to close grazing allotments to further use. The Bureau's record of decision for the Lander Field Office in Wyoming prepared as part of the previous National Greater Sage-Grouse Planning Strategy provides a useful example for the current planning process:

> When livestock grazing permits and/or grazing preference are voluntarily relinquished in portions of or all of an allotment, analyze suitable livestock grazing management, including closure to livestock grazing where appropriate, based on benefits to resources and other uses.

(Lander 2014 ROD: 98, Record 606).

5. Preserve greater sage-grouse priority habitat from new disturbance

5.1. Rights-of-Way

ONDA recommended in our scoping comments that the Bureau of Land Management…

Designate sage-grouse priority habitat as excluded from new rights-of-ways, including for renewable energy development.

The draft environmental impact statement and the preferred alternative…

Establishes PHMA as "avoidance areas" for new rights-of-ways ("ROWs") for utility scale wind and solar energy development and major transmission lines (BLM 2024 DEIS: 2-96 – 2-98, Table 2-10). The Bureau further directs that "[a]reas where major ROWs cannot be avoided apply minimization measures . . . Residual direct and indirect impacts would be mitigated through compensatory mitigation" (BLM 2024 DEIS: 2-93 – 2-97, Table 2-10). Although the DEIS does describe that "wind and solar energy testing and development . . . would not be allowed in breeding and nesting habitats, or in limited/high value (e.g., winter, limited mesic) seasonal habitats" except with few exceptions, the Bureau does not provide any boundary within which such development would be restricted (BLM 2024 DEIS: 2-93 – 2-94, Table 2-10).

The best available science—including the Bureau's own analysis—indicates that renewable energy development and other major ROWs are a significant threat to sage-grouse and should be restricted in priority habitat.

Utility-scale wind, solar, and geothermal development and associated infrastructure can affect sage-grouse in a variety of ways, through habitat loss and fragmentation, increased predation (and thus behavioral avoidance by sage-grouse) facilitated by development, and disturbance from noise, motion, and human activity (*see* BLM 2024 DEIS: 2-92). The Bureau has also identified habitat fragmentation by transmission lines as a "major threat" to sage-grouse (Oregon 2015 FEIS: 1-6), and again reported in this DEIS that "the presence of transmission lines negatively impact[s] [sage-grouse] habitat selection, demographic rates, and survival rates" (BLM 2024 DEIS: 2-92) (internal citations omitted). "Comparing environmental conditions and levels of human disturbance on areas of former range (extirpated range) with areas still occupied by [sage-grouse] (occupied range), Wisdom *et al.* (2011) identified five key factors most likely to lead to extirpation of local populations: sagebrush area, elevation, distance to transmission lines, distance to cellular towers, and landownership" (Oregon 2015 FEIS: 3-16).

Transmission lines can affect individual birds and populations of sage-grouse. "Bird mortality or injury could occur from collision or electrocution with transmission lines and other ROW structures. ...Indirect impacts could include introduction of invasive vegetation that may result in alteration of wildfire frequency; increase in predators or predation pressure; decreased survival or reproduction of the species; and decreased habitat effectiveness" (Oregon 2015 FEIS: 4-125). The U.S. Fish and Wildlife Service similarly identified transmission lines as a threat to sage-grouse in its 2010 listing determination for the species, noting that "the impact of [a] powerline is greater than the actual footprint . . . Powerlines can directly affect greater sage-grouse by posing a collision and electrocution hazard, and can have indirect effects by decreasing lek recruitment, increasing predation, fragmenting habitat, and facilitating the invasion of exotic annual plants. 75 Fed. Reg. at 13,928 (internal citations omitted).

Recommendation: Consistent with the best available science, as well as the agency's own previous planning processes, the Bureau should exclude all new rights-of-way for utility scale renewable energy development and high-voltage energy transmission in sage-grouse priority habitat in Oregon to prevent further habitat fragmentation, conserve and support sage-grouse use of late brood-rearing and winter habitat areas, and bolster habitat resilience against invasive species and climate change.

5.2. Vegetation Management

ONDA recommended in our scoping comments that the Bureau of Land Management…

Account for vegetation management that eliminates or degrades sagebrush steppe in disturbance cap calculations for sage-grouse priority habitat.

The draft environmental impact statement and the preferred alternative…

Maintains a three percent disturbance cap and explicitly excludes vegetation treatments from disturbance cap calculations (BLM 2024 DEIS: 2-31, Table 2-7).

The best available science indicates that sagebrush removal or alteration should be tracked and limited to effectively manage sagebrush ecosystems and sage-grouse, and minimize or eliminate disturbance that may promote the establishment of invasive nonnative species.

The National Technical Team (2011) report concluded that "[l]and uses, habitat treatments, and anthropogenic disturbances will need to be managed below thresholds necessary to conserve not only local sage-grouse populations, but sagebrush communities and landscapes as well" with "[t]he overall objective [being] to protect priority sage-grouse habitats from anthropogenic disturbances that will reduce distribution or abundance of sage-grouse" (NTT 2011: 6, 7). Similarly, the Conservation Objective Team (COT) (2013) report recommended "[r]educ[ing] or eliminat[ing] disturbances that promote the spread of these invasive species" including by "precluding the use of treatments intended to remove sagebrush" (COT 2013: 42).

Under the COT report's conservation objective, "Avoiding sagebrush removal or manipulation in sage-grouse breeding or wintering habitats," the team wrote that:

> Although many treatments are often presented as improving sage-grouse habitats, data supporting the positive impacts of sagebrush manipulation on sage-grouse populations is limited. . . . Exceptions to this can be considered where minor habitat losses are sustained while implementing other habitat improvement or maintenance efforts (e.g., juniper removal) and in areas used as late summer brood habitat. Appropriate regulatory and incentive-based mechanisms must be implemented to preclude sagebrush removal and manipulation for all other purposes.

(COT 2013: 44) (internal citations omitted).

Recommendation: The Bureau should include in the disturbance cap in sage-grouse priority habitat anthropogenic vegetation treatments that remove or manipulate sagebrush or sagebrush habitats, juniper treatment that leaves downed trees on the landscape, and/or planting of non-native species at all prescribed spatial scales, as recommended in the NTT and COT reports. This policy aligns with recommendations by leading scientists to implement a program requiring "no net loss" of sagebrush habitats on public lands, and would support the Bureau to more effectively track, restore and, where necessary, prevent further removal or manipulation of sagebrush.

6. Plan and manage travel in greater sage-grouse habitat

ONDA recommended in our scoping comments that the Bureau of Land Management…

Prioritize travel management planning in the new sage-grouse plan amendments to minimize habitat loss, fragmentation and disturbance to sage-grouse, including planning for off-highway/off-road vehicle use areas.

The draft environmental impact statement and the preferred alternative…

Acknowledges the increase in off-road vehicle use (BLM 2024 DEIS: 3-76) and that the "use of existing roads and development of new roads in [sage-grouse] habitat contributes to [sage-grouse] habitat loss, alteration, and fragmentation" (BLM 2024 DEIS: 4-232). Although "[t]ravel management planning has been completed or is underway on certain BLM-administered lands," the Bureau provides no management directive or timeline for all districts to update their respective travel management plans (BLM 2024 DEIS: 4-232). The 2015 ARMPA required the Bureau to "[i]nitiate travel management planning within 5 years of RMP revisions" (BLM 2015 ARMPA: 2-32) (MD TTM 5).

The Bureau has not completed a travel plan for *any* field office in eastern Oregon that is subject to the ARMPA. In fact, on Steens Mountain–the only management unit for which the Bureau *has* prepared a travel plan–that plan was vacated as unlawful in 2019. *Or. Nat. Desert Ass'n v. Rose*, 921 F.3d 1185, 1189–93 (9th Cir. 2019) (vacating Travel Plan because Bureau had failed to establish "physical condition" of routes on Steens Mountain and failed to "use *any* method or estimate" to establish baseline conditions); *see also Or. Nat. Desert Ass'n v. Shuford*, No. 6:06-cv-242-AA, 2007 WL 1695162, *17–19 (D. Or. June 8 2007) (holding BLM's Transportation Plan for Steens Mountain was not "comprehensive" because "specific field inventories" and "need determinations" had yet to be accomplished); 16 U.S.C. § 460nnn-22(a) (Steens Act transportation plan requirement).

A travel plan is an integral part of land use planning and sage-grouse conservation. The Bureau's travel management handbook (BLM 2012b) makes clear that the agency should consider and begin the process of travel planning in "the pre-planning phase" of a land use plan revision. Accurate route inventory and data gathering is essential. There has been more than enough time to complete (let alone simply initiate) the travel planning process for each of the land use plans being amended (for the third time) in the present ARMPA process. The Bureau's handbook explains that "possible reasons" for not completing a travel management plan concurrently with a land use plan "might be size or complexity of the area, controversy, incomplete data, or other constraints" (BLM 2012b). None of those reasons are present here. The Bureau's decades-long delay in preparing crucial travel plans is unreasonable. These delays undermine informed land management and hinder the Bureau's ability to preserve wild places, unfragmented habitat, and climate change-resilient landscapes.

The best available science indicates that roads destroy, fragment, and alter sage-grouse habitat and facilitate the spread of invasive, non-native plant species.

Roads have multiple effects on sage-grouse, including mortality from vehicle collisions and behavioral disruption due to traffic, noise, and human presence (NTT 2011). Holloran and Anderson (2005b) found that road densities greater than 0.7 linear miles per square mile within 2 miles of leks resulted in significant negative impacts to sage-grouse populations. Anthropogenic noise associated with roads has been shown to decrease abundance of males at leks by 73 percent, relative to paired controls (Blickley *et al.* 2012). These effects are not limited to the immediate vicinity surrounding a road, as Connelly *et al.* (2004) reported that male attendance at leks up to 7.5 km (4.66 miles) away declined at higher rates than leks located farther away from

roads. In addition, fires are much more likely to ignite along roads. Areas where sage-grouse have been extirpated have 25 percent more roads compared to habitat where sage-grouse persist (Wisdom *et al.* 2011).

Recommendation: The Bureau should recognize the importance of transportation planning and management to sage-grouse conservation by providing management direction to districts to complete travel management planning in sage-grouse range within a five-year timeline, consistent with the previous planning process.[19]

7. Retain, designate and manage sagebrush reserves for greater sage-grouse and other fish and wildlife

7.1. Sagebrush Focal Areas

ONDA recommended in our scoping comments that the Bureau of Land Management…

Retain Sagebrush Focal Areas to support conservation and management sage-grouse in Oregon.

The preferred alternative…

Eliminates Sagebrush Focal Areas in Oregon and declines to reestablish these areas in any other state (BLM 2024 DEIS: 2-13).

Recommendation: With the potential elimination of Sagebrush Focal Areas in the final plan, it is even more important that the Bureau establish a system of reserves for sage-grouse (see below).

7.2. Strategic Areas

ONDA recommended in our scoping comments that the Bureau of Land Management…

Retain and provide management direction for Strategic Areas in Oregon.

The draft environmental impact statement and the preferred alternative…

[19] Where an agency lacks a "concrete timeline" for meeting a deadline, even commitments to complete interim—but not final—steps are a "roadmap for further delay" and "stretch[] the 'rule of reason' beyond its limits." *In re Pesticide Action Network N. Am.*, 798 F.3d 809, 814 (9th Cir. 2015). Here, the Bureau has had since 2015 to complete travel plans on the eight RMP areas amended by the 2015 ARMPA, but has failed to do so. Given that one federal court has already chided the agency for its unreasonably delayed implementation of the Key RNA closure areas, the Bureau should more concretely establish—and adhere to—a concrete timeline for completion of crucial travel plans. *See Bushue I*, 644 F. Supp. 3d at 841 ("The absence of any target fiscal year timeline for key RNA closure, the protruded timelines for NEPA review, and the failure to make final grazing decisions suggest that BLM has committed to a 'roadmap for further delay.') (citing *Pesticide Action Network*, 798 F.3d at 814, and determining that "a nine-plus year timeframe 'stretch[s] the "rule of reason" beyond its limits.'").

Retain Strategic Areas from the 2015 ARMPA (*see* BLM 2024 DEIS: 1-8 , explaining that "[t]his RMPA is not reconsidering all existing GRSG management actions in the . . . 2015 RMP Amendments . . . . [M]anagement actions in the existing RMPs that do not need to be changed to meet the purpose and need will not be considered for amendment and will remain unaltered in the existing RMPs"), but fail to provide any management direction for these designations.

The Bureau designated Strategic Areas to inform land managers of important habitats and opportunities where management can support restoration, sage-grouse breeding, and climate resilient habitats.

The Oregon 2015 ARMPA uniquely identified networks of "strategic areas" to support management and conservation of sage-grouse habitat, including individual and overlapping "Climate Change Consideration Areas," "Restoration Opportunity Areas," and "High Density Breeding Areas" (Oregon 2015 FEIS: 2-49, Fig. 2-4). Strategic areas cover more than 5,169,871 acres in the state, including 3,778,694 acres in designated priority habitat areas and 1,391,178 acres in general habitat areas (Oregon 2015 FEIS: 2-48). Strategic areas include Bureau-managed lands, other federal and state lands, and even private lands. However, they do "not have any management actions defined for them, as they establish priorities for only certain types of BLM administrative actions and do not restrict or prohibit activities" (Oregon 2015 FEIS: 2-48). The Bureau also noted that "strategic areas are not meant to be permanently fixed to a given area and are expected to shift over time as the landscape changes and the habitat most important to the [sage-grouse] shifts" (Oregon 2015 FEIS: 2-48).

Recommendation: Provide some level of guidance for land managers to incorporate and implement measures in planning and management that recognize and support the purpose and goals of Strategic Areas in Oregon.

7.3. Sagebrush Reserves

ONDA recommended in our scoping comments that the Bureau of Land Management…

Designate a network of Areas of Critical Environmental Concern ("ACECs") to serve as sagebrush habitat reserves for sage-grouse and other sagebrush-dependent species.

The draft environmental impact statement…

Failed to propose new ACECs to support sage-grouse conservation in Oregon, which is both ecologically irrational and legally indefensible. In fact, while recognizing the value of certain existing ACECs and Research Natural Areas to sage-grouse in Oregon, the DEIS declined to direct updated planning and management of these areas to better serve the species (BLM 2024 DEIS: App'x 5, 5-28). This is in contrast with the Bureau's previous sage-grouse planning process, which at least committed to updating site-specific plans for three ACECs to align their management with sage-grouse conservation goals. *See* Appendix C, ("Proposed Greater Sage-Grouse Areas of Critical Environmental Concern in Oregon").

The best available science–and the Bureau of Land Management's own analysis–recommends…

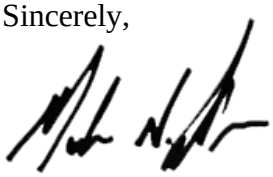
Specially designating and managing a system of sage-grouse ACECs in Oregon, and as part of a larger network of habitat reserves, would benefit conservation of the species within Oregon, the northern Great Basin, and across the entire western range of the sage-grouse.

Recommendation: See Appendix C ("Proposed Greater Sage-Grouse Areas of Critical Environmental Concern in Oregon") for ONDA's comprehensive analysis and proposed system of sage-grouse ACECs in Oregon.

* * *

Thank you for your consideration of these comments.

Sincerely,



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Appendix A. Maps

A. ODFW Greater Sage-Grouse Priority Areas for Conservation (PAC) vs. BLM Alternative 5 Priority Habitat Management Area (PHMA)

B. Sage-Grouse Summer Habitat and ODFW and BLM-identified Priority Habitat

C. Sage-Grouse Summer Habitat and ODFW-identified Priority Habitat

D. Sage-Grouse Winter Habitat and ODFW and BLM-identified Priority Habitat

E. Sage-Grouse Winter Habitat and ODFW-identified Priority Habitat.

F. 2015 ARMPA Strategic Areas and ODFW and BLM-identified Priority Sage-Grouse Habitat

G. 2015 ARMPA Strategic Areas and ODFW-identified Priority Sage-Grouse Habitat

Appendix B. ONDA Comment Letters on BLM NEPA Analyses for Key Research Natural Areas

1. Jan. 6, 2022 letter ("Public Comment, East Fork Trout Creek Research Natural Area Closure, DOI-BLMORWA-B060-2022-0001-EA")

2. Feb. 9, 2022 letter ("Malheur Field Office Greater Sage-grouse Key Research Natural Areas Environmental Assessment, DOI-BLM-ORWA-V000-2022-0006-EA")

3. Feb. 18, 2022 letter ("Public Comment, Key RNA Grazing Closures, DOI-BLM-ORWA-L050-2022-0005-EA")

4. Sept. 5, 2023 letter ("Analysis of Actions to Implement Areas Unavailable to Livestock Grazing under the 2015 Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment in the Black Canyon Key Research Natural Area (DOI-BLM-ORWA-V000-2023-0041-EA)")

5. Sept. 5, 2023 letter ("Mahogany Ridge Key Research Natural Area Exclosure CX (DOI-BLM-ORWA-V000-2023-0042-CX)")

6. Oct. 10, 2023 letter ("Analysis of Actions to Implement Areas Unavailable to Livestock Grazing under the 2015 Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment in the Dry Creek Bench and Lake Ridge Key Research Natural Area (DOI-BLM-ORWA-V000-2023-0043-EA)")

7. Oct. 17, 2023 letter ("Analysis of Actions to Implement Areas Unavailable to Livestock Grazing under the 2015 Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment in the South and North Ridge Bully Creek Key Research Natural Areas (DOI-BLM-ORWA-V000-2023-0050-EA)")

8. Oct. 31, 2023 letter ("Analysis of Actions to Implement Areas Unavailable to Livestock Grazing under the 2015 Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment in the South Bull Canyon Key Research Natural Area (DOI-BLM-ORWA-V000-2023-0052-EA)")

9. Dec. 15, 2023 letter ("Analyses of Actions to Implement Areas Unavailable to Livestock Grazing under the 2015 Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment in Key Research Natural Areas on the Lakeview and Vale Districts")

Appendix C. Proposed Greater Sage-Grouse Areas of Critical Environmental Concern in Oregon

1. June 13, 2024 letter ("Public Comment, 2021 Greater Sage-grouse Land Use Plan Amendments (DOI-BLM-WO-2300-2022-0001-RMP-EIS), Areas of Critical Environmental Concern")

2. Appendix 1. Bureau of Land Management "17 ACEC" Proposal to Conserve Greater Sage-grouse in Oregon

3. Appendix 2. Maps

Appendix D. ONDA Comment Letter on Tri-State Fuel Breaks Project

Montana Natural Resource Coalition of Counties

P.O. Box 468 • Lewistown, MT 59457
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Board of Directors

John Fahlgren, President
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May 14, 2024

BLM Utah State Office,
440 West 200 South #500
Salt Lake City, UT 84101
ATTN: HQ GRSG RMPA

Sonya Germann State Director
Montana/Dakotas State Office
5001 Southgate Drive
Billings, MT 59101

Tracy Stone-Manning Director
Bureau of Land Management
1849 C Street NW, MS 5221-M
Washington, DC 20240

ATTN: HQ GRSG RMPA

RE: Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning (ACEC Evaluation)

To whom it may concern:

The Montana Natural Resource Coalition (MtNRC) is a network of eighteen (18) counties who have county governmental jurisdiction over 53,814 square miles in the State of Montana. MtNRC's mission is to inform federal agency rulemaking pertaining to land use, natural resource planning, and to advocate on behalf of our membership. Current MtNRC members include Beaverhead, Blaine, Fergus, Garfield, Liberty, Madison, McCone, Musselshell, Pondera, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Sweet Grass, Valley, and Wibaux Counties.

1. Introduction

MtNRC strongly supports the Bureau of Land Managements (BLM) preferred alternative which does not include areas of critical environmental concern (ACECs) within the Resource Management Plan (RMP) amendments for sage-grouse. The ACEC evaluation did not consider already reserved and withdrawn Taylor Grazing Act (TGA) district lands in their *relevance* and *importance* criteria. If adequately evaluated, the long extant provision under the TGA and Federal Land Policy and Management Act (FLPMA) reaffirms BLM's preferred alternative to not implement special management through ACEC designations for sage-grouse habitat. Further the expansive nature of ACEC proposals across range wide sage-grouse habitat in the millions of acres, if implemented, are subject to FLPMA withdrawal procedures which is a separate process from the National Environmental Policy Act (NEPA) EIS process. It is important to note that over time an inordinate emphasis on landscape scale ACEC designations through the land use and resource planning processes will eliminate other FLPMA principal uses with associated impacts on local economies.

Summary Points:

- ACECs are subject to the acreage thresholds and subsequent withdrawal procedures and reporting requirements under FLMPA.[1]
- BLM ACEC evaluation failed to consider existing reservations and withdrawals.
- BLM top-down ACEC Evaluation Approach in the Current Greater Sage Grouse (GRSG) Planning Effort inverts FLMPA bottom-up land use planning (ACEC Evaluation 5.4.2) as expressed at 43 C.F.R. 1600 which requires coordination with counties via the field manager and state director.
- The burden is upon the agency to empirically demonstrate that special management attention is required to protect and prevent irreparable damage to listed values before an ACEC is formally designated in a record of decision (ROD).

2. Background

The Bureau of Land Management (BLM) considered Areas of Critical Environmental Concern (ACEC) during the 2015 greater sage-grouse amendment process which was developed largely at the state and field office level. The Lewistown Field Office in Montana also amended its Resource Management Plan (RMP) with a final Record of Decision (ROD) in 2021. The ACEC evaluations for greater sage-grouse concluded that ACEC designation within Primary Habitat Management Areas were not required. The Lewistown Field Office ACEC evaluation (ROD 2021) encompassed all other values outside of sage-grouse habitat and concluded no major ACECs were warranted.

3. Coordination with Local Governments

The coordination process was designed to ensure that proposed federal actions are responsive to local conditions, issues, needs, customs, cultures, and economies. Where inconsistencies exist between proposed federal actions and existing local plans, laws, ordinances, and other policies, the federal agency is obligated to work with the coordinate government and attempt consistency with local plans and policies.

Counties have corporate powers and exercise constitutionally and legislatively-delegated state sovereignty over lands within their boundaries. Montana boards of County Commissioners serve as the Chief Executive authority of the County Government. Federal and state agencies are charged by law with administrative authority over specific lands within Montana counties, and all

1 **43 U.S.C. 1714; 43 U.S.C. 1702(j)**; A withdrawal of 5000 acres or more requires notification of Congress & detailed explanation as to the purpose (C)(2)(1), inventory, adjacent impacts to non-public (private) lands, degradation of local communities and individuals, identification of present users and why incompatibilities exist.; **43 C.F.R. § 1610.6 Management decision review by Congress**. - The Federal Land Policy and Management Act requires that any Bureau of Land Management management decision or action pursuant to a management decision which totally eliminates one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more, shall be reported by the Secretary to Congress before it can be implemented. . .”; All bold our emphasis.

governmental entities are to act in the interest of the citizens as prescribed by their statutory authorities.[2]

Montana counties are acutely aware that federal and state managed lands can make up a substantial amount of area within the boundaries of an individual county. The customs, cultures, and economies of counties can directly be affected by changes in administrative or land use policy on federal and state lands. Most Montana Counties have officially adopted land use plans and policies that address land use management issues and provide a guide to assist federal and state land agencies in their development and implementation of land use plans and management actions.[3]

The Fergus County, Montana Land Use Policy states:

> *"Therefore, in compliance with federal statues, federal and state agencies to the extent bound by federal law and regulation shall inform local governments of all pending actions affecting local communities and citizens and* ***coordinate with them in the planning and implementation of those actions****. The Fergus County Commission, when affected by such actions, shall be consulted and coordinated with in accordance with the constitutions and Laws of Montana and the United States."*[4] *(emphasis added)*

In compliance with federal and state law, including the National Wildlife Refuge System Improvement Act (NWRS), National Environmental Policy Act (NEPA), the Federal Land Management and Policy Act (FLPMA), and the National Forest Management Act (NFMA), all federal and state agencies shall consider, to the maximum extent required by law, County Land Use plans and policies, and coordinate with Montana boards of County Commissions for the purpose of planning and managing federal and state lands within the geographic boundaries of a county.[5] The Code of Federal Regulations specifically state at **43 C.F.R. § 1610.3–1 Coordination of planning efforts,**

> *(a) In addition to the public involvement prescribed by §1610.2, the following coordination is to be accomplished with other Federal agencies, state and local governments, and federally recognized Indian tribes. The objectives of the coordination are for the State Directors and Field Managers to:*
>
> *(1) Keep apprised of non-Bureau of Land Management plans;*
>
> *(2) Assure that BLM considers those plans that are germane in the development of resource management plans for public lands;*

2 Phillips County Resource Use Plan 2012 (Montana) (introduction) "State and federal agencies are charged by law with governing state and federal lands inside Phillips County's political boundary in the best interest of all the citizens."

3 43 C.F.R. Section 1610.3-1(c)(1) "In providing guidance to BLM personnel, the BLM State Director shall assure such guidance is as "consistent as possible with existing officially adopted and approved resource related plans, policies or programs of other State agencies, Indian tribes and local governments that may be affected ...."

4 Fergus County Land Use Policy 2011 (Montana)

5 43 U.S.C. 1712(c)(9); Phillips County Resource Use Plan 2012 (Montana) (introduction) "State and federal agencies are charged by law with governing state and federal lands inside Phillips County's political boundary in the best interest of all the citizens."

> *(3) Assist in resolving, to the extent practicable, inconsistencies between Federal and non-Federal government plans;*
>
> *(4) Provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and federally recognized Indian tribes, in the development of resource management plans, including early public notice of final decisions that may have a significant impact on non-Federal lands. . .”*

At the forefront of this chapter, consideration of impacts on local economies and uses is identified and required as a principle baseline for resource management planning by public land agencies.

> ***“43 C.F.R. § 1601.0–8 Principles.*** *....Additionally, the impact on local economies and uses of adjacent or nearby non-Federal lands and on non-public land surface over federally-owned mineral interests shall be considered.”*

4. Areas of Critical Environmental Concern (ACEC)

Areas of Critical Environmental Concern (ACEC) are land and resource priority areas that require special and prescriptive management[6] to provide protection of resource values identified during administrative processes. ACECs have designated boundaries, are generally limited in scope and size, and typically limit principal uses. ACECs as reservations are distinguished from other BLM managed lands in that management for fewer principal uses takes place at the expense of the other multiple land use values.

The ACEC designation process is a complex administrative undertaking that takes place in the context of the Resource Management Planning (RMP) or RMP amendment processes. Administrative procedural processes for ACECs are to include coordination between BLM, county, state and tribal governments.[7] Once a potential ACEC has been identified, BLM ACEC planning procedures require assessment using specific BLM “*relevance*” and “*importance*” criteria[8] outlined at 43 C.F.R. 1610.7-2 and in BLM’s policy manual for designating ACECs.

Most importantly, the burden is upon the agency to empirically demonstrate that special management attention is required to protect and prevent irreparable damage to listed values before an ACEC is formally designated in a ROD. BLM has not demonstrated this in their evaluation.

> “*43 U.S.C. 1702(a) - The term “areas of critical environmental concern” means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required)* ***to protect and prevent irreparable damage*** *to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards*.” (emphasis added)

The ACEC designation and management requirements are unique, complex, procedurally detailed, and are to be administrated at the local field office level under the State BLM director.[9] ACECs

6 BLM Manual Section 1613.2.22.A.5; BLM Manual Section 1613.2.B.2.

7 43 U.S.C. § 1712 (c)(9).

8 BLM Manual Section 1613.1.06. Policy.

9 43 C.F.R.range wide 1610 Resource Management Planning; BLM Manual Section 1613.1.12.

have designated boundaries with the total acreage being based on the area necessary to protect the relevant and important values and prescriptive management requirements.

The Resource Management Planning (RMP) process should document the relationship of ACECs with respect to other land use designations and provides procedural guidance on the monitoring and management of the ACEC.[10] This prescription includes allowable uses, restrictions and limits based upon the special management attention derived from the process.[11]

- ***Landscape Scale Conservation is an inappropriate use of ACECs in resource use planning and conflicts with multiple use sustained yield mandates.***

There is a concerted effort within multi-national environmental organization and executive branch agencies designed to expand the scope and area of ACECs to accommodate landscape level wildlife conservation and wildlife connectivity through expanding corridor systems. The proposed expansion of ACEC designations is a distortion - or complete reversal - of the FLPMA intent and purpose for ACEC designations.

It is important to note that over time an inordinate emphasis on landscape scale ACEC designations through the land use and resource planning processes will eliminate other FLPMA principal uses. It also directly conflicts with BLMs statutory responsibility to manage public lands in a manner which,

> ". . .*recognizes a domestic source of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands*;"[12]

Because ACECs are typically designated for a single or fewer Principal Uses than normal BLM managed lands, any proposed expanded landscape area will result in a reduction or elimination of other FLPMA Principal Uses by establishing wildlife conservation as a preference, preeminent, or even dominant Principal Use.

- ***Landscape Scale ACEC designations for sage-grouse habitat conflict with TGA Reserved CVG Districts***

The management provisions for TGA calls into question the need to establish an ACEC to gain restorative and protective actions for CVG lands.[13] These provisions as noted in the TGA and FLPMA are to be part of the considerations in the land use planning process. The Secretary in careful and considered consultation, cooperation and coordination with the lessees, permittees, and landowners involved,[14] has the mandate to protect, administer, regulate, and improve grazing districts. He is to improve the range through enhancing forage conditions with resulting benefits to wildlife, watershed protection, and livestock production.[15]

10 BLM Manual Section 1613.3.33.C.

11 Ibid.

12 43 U.S.C. 1701(a)

13 43 U.S.C. § 315a

14 43 U.S.C. § 1752(d)

15 43 U.S.C. § 1751(b)(1) & § 315a

The BLM ACEC evaluation failed to consider existing reserved and withdrawn TGA lands and potential conflicts in statutory responsibilities of the Secretary of Interior relating to management priorities. Layering an ACEC over already reserved lands poses statutory conflicts with direct and indirect effects on federal lands permittees, local governments, state grazing districts, as well as other investment backed expectations.

Both ACECs and Taylor Grazing Act (TGA) Chiefly Valuable for Grazing (CVG) Districts are mapped and cadastrally-boundaried reservations under the Federal Power Act.[16] Under the public land use statutes and the Resource Management Planning (RMP) "*relevance*" and "*importance*" criteria for ACEC designations, BLM is responsible to administratively assess land use or natural resource value conflicts. This includes resolving values conflicts and determining whether a proposed ACEC, Wild and Scenic River, Watershed Reserve, or Wilderness Area might pose a conflict with a preexisting CVG District, its boundaries, or established values for grazing of domestic livestock.

In June 1934, the United States Congress enacted the Taylor Grazing Act (TGA) which effected the withdrawal, reservation, and classification of 135 million acres of **vacant, unreserved, and unappropriated** working lands across a twelve-state region of the western United States.

Five months following TGA enactment, President Roosevelt issued Executive Order 6910 to implement the provisions of the TGA by withdrawing 80 million acres of federal lands for **classification** as *Chiefly Valuable for Grazing* (CVG) of domestic livestock:

> *"NOW, THEREFORE...it is ordered that all of the vacant, unreserved and unappropriated public land in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah and Wyoming be, and hereby is, temporarily withdrawn from settlement, location, sale or entry, and reserved for classification, and pending determination of the most useful purpose to which such land may be put in consideration of the provisions of said act of June 28, 1934, and for* ***conservation and development of natural Resources****."*[17] *(emphasis added)*

Together, the TGA and Executive Order 6910 enacted a geopolitically bounded, cadastrally-mapped[18] Chiefly Valuable for Grazing District (CVG District) land classification system that was reaffirmed with full force and authority by Congress in the Federal Land Management Policy Act of 1976 (FLPMA), the Public Rangelands Improvement Act of 1978 (PRIA),[19] and over a century of US public land law and policy.

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16 *See:* Carlson et. al. - *Survey of the History, Background, and Compliance of the Proposed BLM Landscape, Conservation and Health Rule with The Public Land Laws of the United States* – BLF, June 29, 2023

17 Executive Order 6910

18 Map BLM Grazing Districts May 1945

19 43 U.S.C. § 1903(b) Rangelands inventory and management - "The **Secretary shall manage the public rangelands in accordance with the Taylor Grazing Act** (43 U.S.C. 315-315(o)), the Federal Land Policy Management Act of 1976 (43 U.S.C. 1701- 1782), and other applicable law consistent with the public rangelands improvement program. . ." (emphasis added)

In February 1935, using land withdrawal authority under the now repealed Pickett Act,[20] President Roosevelt issued Executive Order 6964 effecting the withdrawal of **all remaining public lands** over a twelve-state region.[21] The combined action of Executive Orders 6910 and 6964, along with concurrent appropriations by Congress, increased the original acreage for CVG District classification from 80 to 142 million acres.[22] The General Land Office reported that as of the summer of 1935, no unreserved public lands remained in the federal system:

> "*Because of the withdrawals made by the Executive orders…there were no unreserved public lands at the close of business on June 30, 1935*."[23]

The 3-fold TGA and Executive Order 6910 system includes provisions for orderly use and mechanical improvement of public rangelands; requirements for collection and distribution of revenues to host county governments; standards for economic stabilization of the domestic "*livestock industry dependent upon the public range,*"[24] and a co-management permit system through grazing districts which provides preeminent access to public lands for domestic livestock grazing.

At the time that the TGA CVG District lands were withdrawn[25] and reserved from further appropriation, a new federal agency, the Division of Grazing, was authorized by Congress and its responsibilities were delegated to the Secretary of the Department of the Interior (DOI). The primary function of the Division of Grazing (later the Grazing Service, and in 1946 the Bureau of Land Management) is to administer the TGA classification system, facilitate improvement of marginal TGA rangelands through orderly development, and implementation of a geopolitical boundary management system:

> *"…the objects of such grazing districts, namely, to regulate their occupancy and use, to* ***preserve the land and its resources from destruction or unnecessary injury****, to* ***provide for the orderly use, improvement, and development of the range****;"*[26] (emphasis added)

As of 1999, approximately 135 million acres of reserved, TGA CVG District lands are managed by BLM under FLPMA and the Public Rangelands Improvement Act (PRIA)

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20 Pickett Act of June 25, 1910. Ch. 421, 36 Stat. 847 et seq. (43 U.S.C. § 141 et seq.)

21 Executive Order 6964

22 43 U.S.C. § 315. Notes from the Office of Law Revision Counsel: Amendments **1936—Act of June 6, 1936**, increased acreage which could be included in grazing districts from 80 million to 142 million acres; **1954—Act of May 28, 1954**, struck out the first sentence of the provision limiting to one hundred forty-two million acres the area which might be included in the grazing districts.

23 General Land Office Annual Report. 1:2. 1935.

24 EO 6910

25 43 U.S.C. 1702 (j)

26 43 U.S.C. § 315a. Protection, administration, regulation, and improvement of districts; rules and regulations; study of erosion and flood control; offenses.

These CVG district lands were withdrawn and classified under the Taylor Grazing Act[27] for protecting the range, providing for orderly use, safeguarding the domestic livestock industry, and enhancing fish and wildlife opportunities for fishing and hunting all of which plays an integral role in the economic activity and tax base of the state and county governments. These long extant statutory frameworks preclude the need for ACEC designation on TGA reserved districts.[28]

- **ACEC Evaluation Approach in the Current GRSG Planning Effort inverts FLMPA bottom-up land use planning**

The BLM performed a rangewide ACEC evaluation across 10 states for relevance and importance from the top down. This runs counter to the traditional process for ACEC evaluations and land use planning which is developed bottom-up through the local field office[29] by the field manager in collaboration with cooperating agencies.[30]

> "*The evaluation for relevance and importance criteria was conducted in a two-step approach that started with rangewide scientific data and models, followed by a review by staff at the state and field office levels who are more familiar with the local habitat conditions.*" (ACEC Evaluation 5.4.2)

As a result, the local field offices are left in the dark regarding intricate details within the planning process. This is concerning because it is through the local field offices that resource planning best considers and understands local conditions, economies, land holdings, and uses of adjacent non-federal lands.

> **43 C.F.R. § 1601.0–8 Principles. "***The development, approval, maintenance, amendment and revision of resource management plans will provide for public involvement and shall be consistent with the principles described in section 202 of the Federal Land Policy and Management Act of 1976. Additionally, the impact on local economies and uses of adjacent or nearby non-Federal lands and on non-public land surface over federally-owned mineral interests shall be considered."*

ACEC designations have a high potential to adversely affect multiple-use values on federal lands as well as existing and potential economic uses of private or state lands that are adjacent to federal lands. The BLMs top-down approach for such analysis is unprecedented and counter to the FLPMA priorities for land use planning and public involvement. We are concerned that the application of top-down modelling by executive agencies in their rule making process lacks quality

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27 43 U.S.C. 1714(a) – "*On and after the effective date of this Act the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section*.", 43 U.S.C. 1714(j) *"The Secretary shall not make, modify, or revoke any withdrawal created by Act of Congress; . . ."*; Under the Taylor Grazing Act grazing districts have been: 1. **Withdrawn** from settlement and entry (TGA, 43 U.S.C. § 315, EO 6910) 2. **Reserved** for dedicated public purpose/stabilization of livestock industry and protection of dependent commensurate properties (MGCA 76-16-102. Purpose, EO 6910) 3. **Classified** as Chiefly Valuable for Grazing and Raising of Forage Crops/with statutory requirement for Secretary of Interior to adequately safeguard grazing privileges (TGA § 315; § 315(b)).

28 *See:* The Repurposing of Federally-Reserved Taylor Grazing Districts For Wildlife Rewilding: A Statutory, Administrative and Legal Analysis. Stillwater Technical Solutions. April 22, 2020. J.R. Carlson et. al

29 43 C.F.R. § 1601.0–5(m)

30 43 C.F.R. § 1610.4-1, 4-3, 4-4, 4-5, 4-6, 4-7

control procedures. NEPAs interdisciplinary approach to scientific information contemplates a human based assessment process for evaluating economic, environmental, and other criteria to understand costs and benefits. This can only be realized through field office level planning in collaboration with cooperating agencies, and public involvement.[31]

5. Conclusion

The Department of Interior agencies are expanding regulatory reach predicated on the assertion that climate change was not considered or addressed in prior rule making. This assertion fails to recognize that the Congress promulgated the Taylor Grazing Act classification and district system during the hottest and dryest decade on record for the United States. The framework and provisions of the TGA to "***preserve the land and its resources from destruction or unnecessary injury***" preclude the need for special management attention through ACEC designations over or within TGA reserved districts. The Public Rangeland Improvement Act states,

> 43 U.S.C. § 1903(b) - "*The **Secretary shall manage the public rangelands in accordance with the Taylor Grazing Act** (43 U.S.C. 315-315(o)), the Federal Land Policy Management Act of 1976 (43 U.S.C. 1701- 1782), and other applicable law consistent with the public rangelands improvement program...*" (emphasis added)

BLM should maintain their preferred alternative to not include ACECs within the sage-grouse amendments. BLM in its ACEC evaluation determined some ACECs met the *relevance* and *importance* criteria[32] but failed to consider existing withdrawn and reserved lands under the TGA and FLPMA as described in these comments. BLM's ACEC Evaluation recommended inclusion of the South Valley Phillips and Carter Crook ACECs to be considered in at least one alternative to "*allow an analysis to consider if special management is needed to preserve the qualities of the area (i.e., beyond PHMA management actions)*." We hold that no further special management is needed for these identified areas, and the designation of ACECs over TGA reserved districts poses statutory and procedural conflicts which have not been adequately considered or analyzed.

In conclusion, MtNRC rejects the need for inclusion of ACECs within the Montana/Dakotas region for sage-grouse habitat, or the application of ACECs over reserved TGA CVG Districts which have long established management tools to protect the range while maintaining multiple-use values.

Regards,

John Fahlgren
President
Montana Natural Resource Coalition of Counties

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31 43 C.F.R. § 1610.2(a),(b); (d) *A list of individuals and groups known to be interested in or affected by a resource management plan shall be maintained by the Field Manager and those on the list shall be notified of public participation activities.*

32 Carter Crook GRSG Connectivity Proposed ACEC (ACEC Evaluation 5-18,19); South Valley Phillips GRSG Habitat Proposed ACEC (ACEC Evaluation 5-20,21).

COMMISSIONERS Michael P. Bleak; Paul Cozzens; Marilyn Wood

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Received
JUN 14 2024
Bureau of Land Mgmt UTSO

June 10, 2024

RE: Greater Sage-grouse Conservation Amendment to Land Use Plans EIS

To Whom It May Concern:

Please accept the following comments from Iron County, Utah on the proposed Sage-grouse Conservation Amendment to Land Use Plans.

1. Iron County believes that the purpose and need statement should indicate how the EIS aligns with state and county Resource Management Plans and the sage-grouse management plans as required by FLPMA (43 U.S.C. 1712(b)(9)). One of the needs expressed in Secretarial Order 3353 was to enhance cooperation between DOI and the affected western state in the management and conservation of the Greater Sage Grouse and its habitat. If Secretarial Order 3353 was rescinded by the current Administration, the intent of the order should still stand – that of collaboration.

2. Livestock Grazing – Iron County agrees that livestock grazing on the BLM lands is regulated by current Rangeland Health Standards that include management of livestock, season of grazing, and adaptive management strategies based on current conditions. As such, the chosen alternative need not focus changes in livestock grazing as expressed in Alternative 3, but rely on current RMP direction and guidelines.

3. Conservation Measures – the document needs to address conservation measures that will be applied to initiate habitat recovery. When a sage-grouse population starts to decline and identified soft triggers are met, and where BLM management actions are the causal factor for the decline, conservation measures that would be applied needs to be well defined and made clear.

4. Wild Horse Management – western Iron County currently has eight Horse Management Areas, and four of these impact sage grouse habitat. We are concerned that under the current wild horse management strategies, sage grouse populations and habitat will suffer, especially in drought years. Special management strategies for wild horses (keeping the population at the AML) are needed in these areas to protect sage grouse habitat and the fragile high-desert ecosystem.

5. Mitigation – under the preferred alternative, mitigation would be required and major disturbances would be avoided but allow for some land use where impacts would be minimized. Iron County feels that some major disturbances, such as surface mining, could be allowed under the no-net-loss concept. We would recommend consideration to a more flexible mitigation strategy.

6. ACEC – although the ACEC portion of draft amendment does not propose creation of ACECs in Iron County, we oppose the concept of an ACEC. Designating large tracts of land as ACECs for a species indicates that existing laws, rules, and regulations (i.e. Rangeland Health Standard and Endangered Species Act, etc.) are failing to provide adequate protection to conserve sage-grouse habitat. The EIS should fully analyze existing regulations and specifically identify where existing guidance is not sufficient to protect sage-grouse habitat before proposing any ACEC designation in an area.

7. Any "Technical Team" identified as needed to review science and technology should include a representative from the State and counties.

Iron County appreciates the opportunity to comment on the draft EIS. We look forward to our continued cooperation with the BLM on these important issues.

Sincerely,

Mike Bleak,
Chairman, Iron County Commission Chair

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